EXHIBIT L

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI

MISSOURI STATE CONFERENCE OF)
THE NATIONAL ASSOCIATION FOR)
THE ADVANCEMENT OF COLORED   )
PEOPLE, REDDIT HUDSON,   )
F. WILLIS JOHNSON and   )
DORIS BAILEY,   )
)
       Plaintiffs,   )
)
vs.   ) CASE NO. 14-2077
)
FERGUSON-FLORISSANT SCHOOL   )
DISTRICT and ST. LOUIS COUNTY)
BOARD OF ELECTIONS   )
COMMISSIONERS,   )
)
       Defendants.   )

Deposition of RICHARD ENGSTROM, taken on
Behalf of the Defendant.
August 18, 2015

Reported by Sandra McGraw, CCR, CSR
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8   FERGUSON-FLORISSANT SCHOOL   )
    DISTRICT and ST. LOUIS COUNTY)
9   BOARD OF ELECTIONS   )
    COMMISSIONERS,   )
10   Defendants.   )
11
12   Deposition of RICHARD ENGSTROM, produced, sworn
13 and examined on the 18th day of August, 2015, between
14 the hours of nine-thirty in the forenoon and
15 three-thirty in the afternoon of that day in the law
16 offices of Crotzer & Ormsby, LLC, 130 South Bemiston
17 Avenue, Suite 602, in the County of St. Louis, State of
18 Missouri, before Sandra McGraw, CCR #614, in a certain
19 cause now pending in the United States District Court
20 for the Eastern District of Missouri, between MISSOURI
21 STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE
22 ADVANCEMENT OF COLORED PEOPLE, REDDIT HUDSON, F. WILLIS
23 JOHNSON and DORIS BAILEY, Plaintiffs, vs.
24 FERGUSON-FLORISSANT SCHOOL DISTRICT, et al.,
25 Defendants; on behalf of the Defendants.

Page 4

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3   Foundation
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17   and Ms. Julie A. Ebenstein
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20   Attorneys at Law
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22   St. Louis, Missouri 63105
23   By: Ms. Cindy Reeds Ormsby
24   Ms. Angela Bullock Gabel
25   Mr. David Vaughn

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1   RICHARD ENGSTROM,
2   of lawful age, being duly sworn to tell the truth, the
3   whole truth, and nothing but the truth, deposes and
4   says on behalf of the Defendants, as follows:
5   DIRECT EXAMINATION
6   BY MS. ORMSBY:
7   Q. Would you state your name for the record?
8   A. Richard L. Engstrom. And surname is spelled
9   E-N-G-S-T-R-O-M as in mother.
10   Q. Thank you.
11   Dr. Engstrom can you tell us about your
12   educational background? And let's just start from
13   where you graduated from high school.
14   A. High school. Union High School in Grand
15   Rapids, Michigan.
16   Q. Okay. And you went to undergrad then?
17   A. Yes, I did.
18   Q. Did you go to undergrad immediately following
19   high school?
20   A. I did.
21   Q. And you graduated from high school when?
22   A. 1964.
23   Q. Okay. And where did you go to undergrad?
24   A. Hope College.
25   Q. Where is that at?

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1   A. Holland, Michigan.
2   Q. Okay.
3   A. My voice will come up I think. This often
4   happens.
5   Q. We're right across. I can hear you fine.
6   A. And I'm a little deaf.
7   Q. All right. Well, if you can't hear me?
8   A. Whoa.
9   Q. Yeah.
10   A. I'm sorry. No more humor.
11   Q. I know you've been deposed hundreds of times
12   but I'll just go over briefly the depo rules, which you
13   could probably recite to me --
14   A. Okay.
15   Q. -- better then --
16   A. -- So you heard Holland, Michigan.
17   Q. I did hear Holland, Michigan.
18   A. All right.
19   Q. I did hear that.
20   So I'll ask my questions and if you let me finish,
21   I'll let you finish your answers. At least I'll try my
22   best but call me on it if I don't.
23   A. Okay.
24   Q. I get excited sometimes so I want to ask the
25   next question.

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1   If I ask a question you don't understand, just ask
2   me to rephrase it. I'm not trying to trick you in any
3   way so I want you to understand the question. But if
4   you answer the question, I'll -- it's -- I'll believe
5   that you understood the question; is that fair?
6   A. Yes.
7   Q. Okay. And answer audibly like you just did.
8   Yes, no. Don't shake your head or nod your head
9   because it's difficult for the court reporter to get it
10   down. Okay?
11   A. Okay.
12   Q. All right. All right. Let's get back into
13   it.
14   So you went to Hope College in Holland, Michigan?
15   A. Correct.
16   Q. For your undergrad?
17   A. Correct.
18   Q. And you got your degree in what?
19   A. It's a liberal arts degree.
20   Q. Okay.
21   A. I was a political science major.
22   Q. All right. And did you go to grad school
23   then?
24   A. I did.
25   Q. Immediately following undergrad?

Page 8

1   A. Yes.
2   Q. When did you graduate from your undergrad
3   program?
4   A. 1968.
5   Q. Okay. And where did you go to grad school?
6   A. University of Kentucky.
7   Q. Okay. And what did you get your graduate
8   degree in?
9   A. Political science.
10   Q. Okay. Did you go straight for your doctorate
11   or did you get a master's first? What was the process?
12   A. I got a master's basically on the way to the
13   doctorate.
14   Q. And that was all from the University of
15   Kentucky?
16   A. Correct.
17   Q. And when did you get your doctorate?
18   A. 1971.
19   Q. Okay. Do you have any other educational
20   background after you received your Ph.D.?
21   A. I guess not formal education.
22   Q. Did you do a postdoc anywhere?
23   A. No, I did not.
24   Q. Okay. So were you employed immediately after
25   receiving your Ph.D.?

Page 9

1   A. Yes.
2   **Q. And where were you employed?**
3   A. The University of New Orleans.
4   **Q. Okay. And how long were you there?**
5   A. Thirty -- roughly thirty-five years.
6   **Q. Wow. And you were a professor all that time?**
7   A. Yes.
8   **Q. And when you left the University of New**
9   **Orleans, in what year was that?**
10   A. 2005, I believe.
11   **Q. And what did you do?**
12   A. No, that wouldn't be right.
13   Hmm, I'm sorry.
14   **Q. That's all right.**
15   A. I left after Katrina.
16   **Q. And that was ten years ago.**
17   A. When was that?
18   **Q. It was ten years ago.**
19   A. Was that 2005?
20   **Q. It was.**
21   A. My memory's better than I thought.
22   **Q. And the only reason I know that is I listen to**
23   **NPR and they've been doing all month ten years after**
24   **Katrina?**
25   A. Okay. I left in 2005. In the fall.

Page 10

1   **Q. Okay. And what did you do then?**
2   A. I had -- I became a consultant in the Center
3   for Civil Rights at the University of North Carolina
4   Law School.
5   **Q. Okay. And how long did you do that?**
6   A. A year and a half, I believe.
7   **Q. Okay. So that takes us to the middle of 2006**
8   **approximately? Or 2007?**
9   A. Well, I believe in January 2007, I believe,
10   is -- I moved to The Center for the Study of Race,
11   Ethnicity, and Gender in the Social Sciences at Duke
12   University.
13   **Q. And is that where you are now?**
14   A. Yes.
15   **Q. Okay. Are you employed by Duke as a faculty**
16   **member?**
17   A. No. I have visiting status.
18   **Q. Okay.**
19   A. I'm a research associate in The Center for the
20   Study of Race, Ethnicity, and Gender in the Social
21   Sciences. If I refer to that again, I'll just say
22   REGSS.
23   **Q. REGSS?**
24   A. R-E-G-S-S.
25   **Q. Okay.**

Page 11

1   A. I'm also a visiting fellow in the Institute
2   for -- Social Science Research Institute. I'm a
3   visiting professor within the Political Science
4   Department at Duke and a member of the graduate faculty
5   in the Political Science Department at Duke.
6   **Q. Okay. What percentage of your income comes**
7   **from Duke and what percentage comes from testifying in**
8   **cases like this?**
9   A. At this point I am retired from the University
10   of New Orleans. And I have a pension.
11   **Q. Uh-huh.**
12   A. Not much would come from Duke. That depends
13   on whether I would be teaching or not.
14   **Q. Okay.**
15   A. So the rest of my retirement would be
16   supplemented by consulting work, which includes expert
17   witness work.
18   **Q. Okay. So what percentage is your pension and**
19   **what percentage is consulting work?**
20   A. I don't know.
21   **Q. You don't know.**
22   **Do you have any idea how many VRA cases you've**
23   **been involved in?**
24   A. VRA cases?
25   **Q. Uh-huh.**

Page 12

1   A. Since -- in my whole career?
2   **Q. Uh-huh.**
3   A. Well, the first one was in the early 1970s.
4   **Q. Okay.**
5   A. So I've been going on for over -- almost forty
6   years.
7   **Q. Okay.**
8   A. That's about right. And I don't know what the
9   number would be.
10   **Q. Okay. Do you have any idea how many cases**
11   **you've either testified in or provided expert reports**
12   **for the ACLU or the NAACP?**
13   A. I don't think any for the NAACP.
14   **Q. Okay.**
15   A. Now -- but I have worked for the NAACP Legal
16   Defense Fund.
17   **Q. Okay.**
18   A. If that's what you're referring to.
19   **Q. Sure.**
20   A. Okay.
21   **Q. That's fine.**
22   A. I don't know the number.
23   **Q. Is it more than ten?**
24   A. I would think it would be probably approaching
25   ten but I'm not sure.

3 (Pages 9 to 12)

Page 13

1   Q. Okay.
2   A. As for the ACLU, I believe they did the
3 Washington -- State of Washington Chapter of the
4 NAACP -- no, I'm sorry, of the ACLU.
5   Q. Uh-huh. Right.
6   A. I think they sponsored the case in Yakima,
7 Washington, a few years ago.
8   Q. Okay.
9   A. I don't recall a previous case for the ACLU.
10   Q. Okay.
11   A. Again, I could be wrong but.
12   Q. Yeah.
13   A. Nothing comes to mind at the moment.
14   Q. I won't hold you to it. Just trying to get an
15 estimate.
16   A. Okay.
17   Q. How many VRA cases are you currently involved
18 in?
19   A. I'm going to have to write. Let's see.
20   I think if I had more glove. I'm not sure of this
21 as it goes.
22   Q. Okay.
23   A. But these are the ones that I'm working on or
24 will be soon.
25   Q. Okay.

Page 14

1   A. That would be this one, the case in Fayette
2 County, Georgia.
3   Q. Okay.
4   A. Case in San Juan, Utah. A case in Terrebonne
5 Parish, Louisiana. As of now no work is being done but
6 the Texas redistricting case statewide is under
7 decision, and it seems like that case gets remanded. I
8 mean, it's been a long time and I've been to a couple
9 trials already with it.
10   Q. Okay.
11   A. I just thought of one, although I have done
12 almost no work, but Pasadena, Texas.
13   Q. Okay.
14   A. That's a new one. I may be missing one or
15 two.
16   Q. All right. So I'm counting six including this
17 case? Is that what you count?
18   A. Well, five including this -- including this
19 case. I don't know if I'm working on the Texas
20 redistricting anymore. Who knows.
21   Q. Okay.
22   A. That's like a rubber ball. It seems they're
23 always back in court. But, no, I'm doing no work on
24 that case at this point in time.
25   Q. All right. And how many of those cases are

Page 15

1 you working on behalf of the ACLU?
2   A. Only this one.
3   Q. Okay. And are any of those on behalf of the
4 NAACP Legal Defense Fund?
5   A. Terrebonne Parish is and Fayette County,
6 Georgia is.
7   Q. And have you ever previously worked on a VRA
8 case in Missouri?
9   A. I don't recall one.
10   Q. Okay. And have you worked specifically with
11 the Plaintiffs' attorneys in any other cases?
12   A. I have been involved in -- oh, that may be
13 another ACLU case. I was involved in a case in -- was
14 a Native American case in South Dakota. It will come
15 to me. I think it was something versus City of Martin.
16   Q. Okay.
17   A. But I know Laughlin was involved in that case.
18 And I believe I had -- I have previously done some work
19 on -- for the ACLU that I have not remembered earlier.
20 Let's see. There would have been some but I'm not
21 remembering them --
22   Q. Okay.
23   A. -- right now.
24   Q. Would you say it's less than five that you've
25 worked with these specific attorneys?

Page 16

1   A. Well, it's the first time I've ever worked
2 with these two ladies.
3   Q. Okay.
4   A. Only Laughlin --
5   Q. Okay.
6   A. -- would come under that category.
7   Q. Okay.
8   A. I think maybe five cases, or four. I mean,
9 it's....
10   Q. All right. And who initially contacted you
11 regarding this case?
12   A. I believe it was Dale Ho.
13   Q. And when was that?
14   A. I don't recall. Sometime I would think within
15 the last year, year and a half maybe.
16   Q. And do you know when you were specifically
17 retained for this case?
18   A. No.
19   Q. Okay. And what's your hourly rate?
20   A. Four hundred dollars an hour.
21   Q. And you submitted invoices to the ACLU for
22 this case?
23   A. No, I haven't billed anything for this case
24 yet.
25   Q. Okay. Do you have any idea how many hours so

4 (Pages 13 to 16)

Page 17

1   far you've worked on this case?
2   A. Have not tabulated it.
3   Q. Is it more than a hundred?
4   A. I don't think so.
5   Q. Is it more than fifty?
6   A. I don't think so.
7   Q. Twenty-five?
8   A. After the end of this trip maybe.
9   Q. Okay. I'll put twenty-five to fifty.
10   A. I didn't say that.
11   MS. EBENSTEIN: We won't hold you to it.
12   Q. (By Ms. Ormsby) We won't. We won't. Believe
13   me. They won't either.
14   Has anyone assisted you in any manner in this
15   case?
16   A. The data files and precinct demographics that
17   I relied on in this case were provided to me by William
18   Cooper.
19   Q. And what did you do to prepare for today's
20   deposition?
21   A. Yesterday I read my report, my initial report;
22   my rebuttal report; and Professor Rodden's response to
23   me. I believe he calls it a supplemental report.
24   Q. Did you read any --
25   A. -- And I spent an hour, hour and a half with

Page 18

1   the attorneys last night.
2   Q. Okay. Did you read any other expert reports
3   filed in this case?
4   A. No.
5   Q. And have you spoken to Mr. Cooper?
6   A. I suspect I called him once about the data
7   files to find out how he created them.
8   Q. Uh-huh.
9   A. That would be it I believe.
10   Q. And have you talked to --
11   A. -- And I spoke to Bill Cooper on another
12   issue, not on this case.
13   Q. Sure.
14   A. But about a week ago maybe. But we did not
15   discuss this case.
16   Q. And have you talked to either Professor
17   Kimball or Professor Gordon?
18   A. Professor Kimball?
19   Q. I guess that's a no.
20   A. Well, if you gave me a -- well, it would be
21   no. I don't know who you're referring to specifically.
22   Q. Okay.
23   A. And Professor Gordon, I did not talk to that
24   person either.
25   Q. Okay. And what do you understand your role to

Page 19

1   be in this case?
2   A. To provide a report and now testimony in
3   racially polarized voting in elections for the
4   Ferguson-Florissant School District.
5   Q. Can you tell me generally what is the Voters
6   Rights Act -- Voting Rights Act?
7   A. What is the Voting Rights Act?
8   Q. Uh-huh.
9   A. It's a right adopted in 1965 by the federal
10   government. Has been renewed a number of times with
11   special provisions; although, recently the Supreme
12   Court has basically eliminated the work to be done
13   under Section 5 of the Voting Rights Act. But Section
14   2 is still alive. There are other provisions
15   concerning language, minorities, and language
16   assistance with elections and things of that nature.
17   Q. Okay. And in your initial expert report,
18   which I'll enter as exhibits now.
19   MS. GABEL: These are already entered.
20   (Defendant's Exhibits H and I were marked for
21   identification.)
22   Q. (By Ms. Ormsby) These are the two reports
23   that you authored for this case; is that right?
24   A. Certainly looks like my reports.
25   Q. Okay.

Page 20

1   A. They certainly look like my reports. I'm
2   sorry.
3   Q. And in your initial expert report you conclude
4   that -- at least five elections for school board in the
5   Ferguson-Florissant School District. And in at least
6   five of them there's been racially polarized voting; is
7   that right?
8   A. That's correct.
9   Q. Can you define cohesiveness as it related to
10   the VRA?
11   A. Cohesiveness refers to -- this would be Prong
12   2 of the Voting Rights Act and that concerns whether
13   the minority is politically cohesive and in effect
14   whether there's a tendency to support the same
15   candidates.
16   Q. So any tendency at all? I mean, do you have a
17   cutoff on where you decide what is a tendency and what
18   is not?
19   A. Well, I don't have a cutoff. And whether
20   there's a tendency or not is not election specific.
21   Q. Uh-huh.
22   A. You would be looking across the elections.
23   Q. So if you could turn to page 18 of your
24   initial report. And I'm looking at the 2013 election.
25   And Mr. Henson you stated was a preferred minority

5 (Pages 17 to 20)

Page 21

1   candidate, correct?

2   A. Yes, he was the first preference of minority

3   voters.

4   Q. With about a little over forty percent of

5   votes among African Americans, correct?

6   A. The point estimate is forty-three point seven

7   percent.

8   Q. Okay. But you don't -- do not conclude -- I'm

9   trying to figure out your reasoning here. Because of

10   the point overlap between Hogshead and Brown, you don't

11   declare either of them and because -- and they're well

12   ahead of the second African-American candidate of

13   Thomas. Is that why you don't declare either Hogshead

14   or Brown for the second preferred candidate for African

15   Americans because of the way that the point overlap --

16   competence interval overlaps?

17   A. I would have to review the narrative on that

18   election. And you did say well ahead, I believe?

19   Q. Well --

20   A. I will agree they're ahead.

21   Q. Okay.

22   A. That's an adjective that you used, not me.

23   Q. Okay. So Ms. Hogshead, just to be clear, has

24   twenty-four point two percent of the African-American

25   votes, Mr. Brown has twenty point two percent of the

Page 22

1   African-American vote and Mr. Thomas has eleven point

2   nine percent of the African-American vote.

3   So I'm just trying to understand why you didn't

4   declare either Hogshead or Brown the second preferred

5   candidate of African Americans when they were more than

6   one or more than ten points?

7   A. When they were what? Oh.

8   Q. Due to the difference. I'm just trying to

9   figure out why one of them was not declared the

10   minority-preferred candidate.

11   A. Because when we go to Prong 3, it's -- let me

12   see. Mr. Henson was the choice of the African-American

13   voters. Clearly the first choice.

14   Q. Okay.

15   A. And he was defeated.

16   The other, Hogshead and Brown, come in second and

17   a close third from each other. But I would not

18   consider Hogshead to be an African-American

19   candidate -- a candidate of choice among African

20   Americans in terms of winning because their most

21   preferred candidate Henson lost.

22   Q. But we agree there were two seats up for

23   election?

24   A. There was.

25   Q. Two candidates elected, correct?

Page 23

1   A. That's correct.

2   Q. And Ms. Hogshead has twice the support as

3   Mr. Thomas, correct?

4   A. Correct.

5   Q. But -- and it's not because the competence

6   intervals overlap between Hogshead and Brown? It's

7   just that you decided that there was lack of

8   cohesiveness in some way of the African Americans to

9   determine a second preferred candidate despite the

10   fact?

11   A. Well, I would say that I would list Hogshead

12   as the second choice candidate of African-American

13   voters. But that doesn't mean that she -- I believe

14   it's a she?

15   Q. Uh-huh.

16   A. Was a preferred candidate for African-American

17   voters because that person was Henson. And Henson was

18   defeated in this election.

19   Q. So --

20   A. So my interest is they've shown a clear

21   preference for an African-American candidate.

22   Q. Yes.

23   A. That African-American candidate lost because

24   that preference wasn't shared by non-African-American

25   voters. So I'm not interested in what remained, I'm

Page 24

1   interested in can they elect a candidate they prefer.

2   This is an election in which they could not. Or did

3   not.

4   Q. Well, unless Ms. Hogshead was a preferred

5   candidate of choice. Can't they have two preferred

6   candidates of choice for two open seats?

7   A. Well, obviously it's a two-seat election so

8   there are two candidates that would win -- I mean, if

9   you only counted the black vote, one would be Hogshead.

10   But I have testified for years, and I believe the

11   courts have agreed, when there's a large difference

12   between the voting support between the favored

13   candidate who's African American and lesser preferred

14   candidates who are white, that you don't count them as

15   a preferred representative.

16   I cite a case that does that. It was one of my

17   cases a long time ago, which is Collins v. City of

18   Norfolk.

19   Q. Do you ever name a white candidate as a

20   minority-preferred candidate?

21   A. Sure.

22   Q. When have you named a white candidate?

23   A. Most recently I believe it was in the school

24   board case involving the city's -- the Euclid City

25   School Board in the State of Ohio.

Page 25

1   Q. Okay.
2   A. And this concerned the election held under a
3 remedy called limited voting. The white -- they were
4 for three seats. The white candidate, or one of the
5 white candidates, excuse me, I don't remember exactly
6 how many, was by far the leading candidate of choice of
7 African-American voters over a majority of their votes.
8 And he was the person I said was their choice.
9   **Q. When you determine minority-preferred**
10 **candidates, do you take into account the candidate's**
11 **race?**
12   A. Well, I would say yes, we take into account
13 the candidate's race 'cause biracial elections are
14 considered the most probative. Biracial elections
15 wouldn't be considered the most probative if race
16 didn't matter under the law. So race matters.
17   And what I want to know when I do this is, when it
18 comes to politically cohesive, is that cohesive choice
19 of theirs to be represented by people from within their
20 own group.
21   Lesser candidates from another group -- this is a
22 situation where the vote for Henson is way above the
23 others, and then if they're going to use their second
24 vote, they have to do it.
25   Now, Thomas looks to be a pretty minor candidate.

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1 Didn't even get an estimated twelve percent from either
2 group. Which meant are you going to choose Hogshead or
3 are you going to choose Brown.
4   But the bottom line is I would not -- my concern
5 is with Henson 'cause the black community in this
6 school district has consistently preferred
7 African-American candidates across all five of these
8 elections.
9   So if they're going to be able to elect a
10 candidate or a representative of their choice, I
11 believe Section 2 says representative, then I have to
12 pay particular attention as to whether they are able to
13 elect representatives from within their own group.
14   **Q. So your expert report identifies two**
15 **minority-preferred candidates in 2011, correct?**
16   A. Yes.
17   **Q. One in 2012?**
18   A. Yes.
19   **Q. One in 2013?**
20   A. Correct.
21   **Q. Three in 2014?**
22   A. Yes.
23   **Q. And one in 2015?**
24   A. Correct.
25   **Q. For a total of eight minority-preferred**

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1 candidates over those elections, correct?
2   A. Correct.
3   **Q. And of those minority-preferred candidates,**
4 **only two of the eight or one-quarter were victorious,**
5 **right?**
6   A. That would be correct.
7   **Q. Do you believe that the most recent elections**
8 **are the most probative?**
9   A. Unless there are special circumstances
10 involved in those elections, yes.
11   **Q. And you stand by your finding that minority-**
12 **preferred candidates were victorious, however, in the**
13 **most recent two elections?**
14   A. That is correct.
15   **Q. And just to be clear, from 2011 to the present**
16 **there were twelve total seats contested and you only**
17 **identified eight minority-preferred candidates for**
18 **those seats?**
19   A. Eight of the twelve, yes.
20   **Q. So for four of those seats did you decide that**
21 **minority voting behavior was insufficiently cohesive to**
22 **identify a minority-preferred candidate?**
23   A. In the other four. Yes.
24   **Q. So you first examine whether African Americans**
25 **voted cohesively, throw out the seats where they didn't**

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1 **vote cohesively, and then ask whether minority-**
2 **preferred candidates were victorious in those**
3 **situations where African Americans were cohesive?**
4   A. I didn't throw out anything. You said I threw
5 out the ones where they weren't cohesive?
6   **Q. The four seats that you didn't name a**
7 **preferred candidate for, did you not consider minority-**
8 **preferred candidates for those because minorities had**
9 **not voted cohesively?**
10   A. Well, I wouldn't say I didn't consider them.
11 But it is the case that Thomas, as not the second
12 preferred candidate -- this is in 2013. Wallace and
13 Thomas are not -- again are not -- well, none of
14 them -- the three -- there are three that are in the
15 top three and over twenty some percent. And Wallace
16 and Thomas are below that. Again both groups.
17   Let's see, in 2015, yes, I don't think Hines and
18 Person, I don't consider them candidates of choice.
19   It's only two votes -- two seats, excuse me, and
20 they wouldn't even -- they would not have won either
21 one if they -- if we only counted the African-American
22 vote.
23   **Q. So is it your broad conclusion that African**
24 **Americans do not have the opportunity to elect**
25 **candidates of choice in the Ferguson-Florissant School**

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1   District?
2   A. I would say that -- that the first three
3   elections indicate that they didn't. The fourth
4   election, they did. That was the first time it
5   happened. And then the fifth election is a
6   postlitigation election with unusual circumstances tied
7   to it, so I would be very cautious about inferring much
8   probative value from that election.
9   Q. And we'll talk about that in more detail in a
10   minute.
11   Do you define a minor candidate to be someone who
12   receives less than twenty percent of the vote?
13   A. I don't know that there is a particular cutoff
14   in the competitive situation in these elections.
15   Certainly when a candidate, say, gets less than ten
16   percent from both groups, I would say that it's
17   reasonable to say that they're minor candidates.
18   Q. Okay. Do you believe that homogeneous
19   precinct analysis is as reliable as King's method?
20   A. No.
21   Q. And which analysis is generally more accepted
22   in your field?
23   A. I would say King's method.
24   Q. And what do you do when King's method and
25   homogeneous precinct analysis conflict?

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1   A. I would look at the basis for the homogeneous
2   precinct analysis and it may be obvious that it's an
3   inadequate sample of the precincts.
4   Q. Uh-huh.
5   A. And that's something -- I mean, I would --
6   other things being equal, I would prefer to accept
7   King's method than homogeneous precinct.
8   Q. But you in your report, you showed that they
9   conflicted, right? I mean, you provided a segment on
10   both?
11   A. I didn't show that they conflicted.
12   Q. But you gave a -- you talked about homogeneous
13   precinct analysis a little bit in your initial report?
14   A. Just a brief paragraph and I provide a table
15   of the results. I don't report any of those numbers in
16   the text.
17   Q. Right. Could you turn to page 13 of your
18   initial report and I'm looking at the Footnote No. 9.
19   And it says: HP analyses are typically based on
20   cutoffs of ninety percent and ten percent, but in this
21   application eighty-five percent and fifteen percent are
22   employed due to the small number of precincts that
23   satisfy the ninety percent/ten percent thresholds. Did
24   I read that correctly?
25   A. Yes, you did.

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1   Q. And just for the record, what is HP analysis?
2   A. Homogeneous precinct.
3   Q. Okay. I knew that. I just -- I don't want
4   you to think I didn't know that. I just want the
5   record to be clear.
6   So you indicate in that footnote that there are
7   few precincts in the district that meet the threshold
8   of being homogeneous; is that right?
9   A. There are a few precincts?
10   Q. There are very few precincts.
11   A. If you relied on ninety and ten percent, there
12   wouldn't be many. I think especially -- well, the
13   numbers are there.
14   Q. Uh-huh.
15   A. And I don't think I would say that -- yeah,
16   there are only a few. It increases when you go to
17   eighty-five or fifteen.
18   Q. So is lowering the generally accepted
19   standard -- is that general practice, to lower the
20   generally accepted standard in order to create
21   homogeneous precincts?
22   A. I have seen that done, yes.
23   Q. Do you do that often?
24   A. I don't use homogeneous precincts anymore.
25   Q. Okay. And doesn't the fact that you have to

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1   lower the generally accepted standards to create
2   homogeneous precincts mean that the district is
3   racially dispersed?
4   A. Well, no, not when you're dealing with ninety
5   and eighty-five percent. I mean, sure, there's some
6   dispersion.
7   Q. Uh-huh.
8   A. But the district could be, you know, still
9   racially segregated over to, you know, to some -- to a
10   large degree. That's possible. These numbers don't
11   preclude that.
12   Q. Okay. Let's look at the 2011 election. I'm
13   going to be looking on page 17. In your rebuttal
14   report -- in your rebuttal report you state that 2011
15   is a better example of a three-seat election than 2015.
16   Is that right?
17   A. I don't know if I say that. I do say that
18   2015 is a postlitigation election with special
19   circumstances involved.
20   Q. And if the two African-American candidates in
21   2011, Dr. Graham and Ms. Hawkins, would have won, you
22   would have concluded that there were two minority-
23   preferred candidates, right? If they both would have
24   won?
25   A. Oh, and both would have won?

8 (Pages 29 to 32)

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1   Q. Uh-huh.

2   A. Yes.

3   Q. And that would have been a clean sweep for the

4 minority-preferred candidates?

5   A. Well, it would have been both African-American

6 candidates winning. I would say if there was a clean

7 sweep, it would probably have to involve a third.

8   Q. Okay.

9   A. 'Cause three seats are at issue.

10   Q. Okay. But there were only two African

11 Americans running in this election; is that right?

12   A. Correct.

13   Q. Would it surprise you to know that the third

14 ranked candidate in overall votes, Mr. Chabot, he

15 received three thousand eighty votes, and Ms. Hawkins

16 received two thousand eight hundred and ninety votes,

17 and Dr. Graham received two thousand seven hundred and

18 ninety-five votes? So by my calculations, Hawkins fell

19 short of Mr. Chabot's total by only a hundred and

20 ninety votes and Dr. Graham fell short by two hundred

21 and eighty-five votes.

22   So according to your ecological inference

23 analysis, what percent of the total votes cast by

24 African Americans went to Ms. Hawkins and Dr. Graham?

25   A. Forty-five point six percent.

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1   Q. And you estimate that the most votes cast by

2 African Americans, that therefore, fifty-four point

3 four percent of the votes cast by African Americans

4 went to white candidates in 2011, correct?

5   A. Yes. There were seven white candidates also

6 in the field and they had three votes. So if they used

7 their full franchise, they would have to vote for at

8 least one white.

9   Q. Okay. If Ms. Hawkins had received twenty-one

10 point -- no, if Ms. Hawkins received only twenty-one

11 point five percent of the African-American votes and

12 she fell short of victory by a hundred and ninety out

13 of the twenty-three thousand votes cast, couldn't she

14 have achieved victory if only she'd attracted a

15 slightly larger share of the African-American vote?

16   A. Oh, she may have achieved victory by receiving

17 a slightly larger share of African-American votes. She

18 could have received -- she could have achieved victory

19 by getting more non-African-American crossover. She --

20 I don't know how many, let's see.

21   Chabot, seven point one. And if more African

22 Americans had withheld votes, doesn't look like that, I

23 mean, that that's going to be much impact on Chabot and

24 that it didn't have much support for that person

25 anyway. But, sure, if the election had been different,

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1 the outcome could have been different.

2   Q. So are you claiming though that these

3 African-American candidates didn't win because of block

4 voting of whites?

5   A. Well, whites certainly vetoed their choice.

6   Q. By block?

7   A. If we only counted the African-American vote,

8 Graham and Hawkins would win.

9   Q. Okay.

10   A. All right. Along with Clark.

11   Q. So what technique do you --

12   A. So --

13   Q. I'm sorry.

14   A. So they would have won if we only counted

15 African-American votes; therefore, it's the white vote

16 that resulted in them not winning.

17   Q. So -- so that's the technique that you use to

18 conclude that a lack of white support was a larger

19 factor in her loss, or that of Dr. Graham, than lack of

20 support among African Americans?

21   A. Well, that's Prong 3. You know, that's a

22 Prong 3 of Gingles that tells you to look at what the

23 majority group -- how they voted and whether they

24 defeated -- usually defeat the choice of the

25 African-American voters. They did here and they did in

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1 subsequent elections as well.

2   Q. But you agree that the two African Americans

3 who lost by slim margins and attracted less than half

4 of the African-American votes, that they lost because

5 the whites thwarted their election; is that your

6 testimony?

7   A. Well, my testimony would be that they lost

8 because the white voters didn't vote for them. Now, if

9 the voting behavior had been different, then things

10 would have been different. But I have to deal with

11 what really happened. I don't deal with what if

12 questions when I analyze elections.

13   Q. I know you said that you didn't even know who

14 Dr. Kimball is and you hadn't read his -- Dr. Kimball's

15 report. It's already been entered. Exhibit F.

16   This is the rebuttal report submitted by

17 Dr. Kimball. And Dr. Kimball makes an effort to

18 ascertain the vote shares of various candidates among

19 African Americans and whites. I'll let you look at it.

20   A. It is a rebuttal report?

21   Q. It is a rebuttal report, yes.

22   A. A rebuttal to me?

23   Q. No, no, no.

24   A. Oh, okay.

25   Q. It's just a rebuttal report that he submitted,

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1   **not to you.**
2   A. Okay.
3   **Q. Yeah, he's a Plaintiffs' expert.**
4   A. Oh, okay.
5   **Q. He's one of your guys.**
6   A. I really didn't know. Okay.
7   Okay. I have not seen this.
8   **Q. All right. So if you could just look through**
9   **his report, he -- he makes an effort to ascertain the**
10   **vote shares of various candidates among African**
11   **Americans and whites. And he relies exclusively on**
12   **homogeneous precinct analysis.**
13   MS. EBENSTEIN: I'm sorry, Cindy, he's
14   testified that he's never seen this report.
15   MS. ORMSBY: I know.
16   MS. EBENSTEIN: And doesn't know who
17   Dr. Kimball is. We're going to have to give him time
18   to review it if you're going to ask him questions.
19   MS. ORMSBY: I know. I know.
20   MS. EBENSTEIN: So this isn't a question about
21   his report?
22   MS. ORMSBY: No. It will be. I just was
23   giving a statement and I'm letting him look at it.
24   A. There's no question on the table?
25   **Q. (By Ms. Ormsby) No, no.**

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1   A. Okay. All right. Oh, this is mine to look it
2   over?
3   **Q. Yeah.**
4   A. All right. Okay.
5   MS. EBENSTEIN: Sorry. Before you answer,
6   there are places in this report that Dr. Kimball refers
7   to or reports Dr. Rodden's numbers, so if I could ask
8   that you read the entire report before you answer
9   questions on it.
10   MS. ORMSBY: I'm not going to ask questions
11   about specific numbers, I just want to refer to the
12   chart, the chart that Dr. Kimball does on page 4. If
13   that helps you.
14   MS. EBENSTEIN: There's no chart.
15   MS. ORMSBY: The chart on page --
16   A. Five.
17   MS. ORMSBY: Five, sorry.
18   MS. ORMSBY: Are you okay?
19   MS. EBENSTEIN: Sure. I just wanted to read
20   the description on page 4.
21   MS. ORMSBY: I was waiting for your okay.
22   MS. EBENSTEIN: Which describes what Table 2
23   is. Again, because he's never seen this report before.
24   MS. ORMSBY: Sure. Absolutely.
25   A. This last paragraph?

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1   MS. EBENSTEIN: Yeah. Well, I'd prefer you
2   read the entire report and that describes why he's
3   doing it in comparison to Dr. Rodden's report.
4   A. The entire document?
5   MS. EBENSTEIN: Right here. I'd prefer you
6   read the entire document or just don't ask questions
7   about it. But, yeah, can you take -- we can go off the
8   record but if you want to take a second to read the
9   whole thing if you want to answer questions about it.
10   MS. ORMSBY: Sure. We'll go off the record.
11   (Short break.)
12   **Q. (By Ms. Ormsby) So you've read the entire**
13   **report, correct?**
14   A. Yes.
15   **Q. And --**
16   A. Quickly but yes.
17   **Q. We agree that Dr. Kimball used homogeneous**
18   **precinct analysis?**
19   A. We do.
20   **Q. Okay. And you've testified that you don't**
21   **believe that that's the best method to use already?**
22   A. I have testified that EI is preferable.
23   **Q. Okay. So if we could just then turn to Table**
24   **2 on page 5.**
25   A. I'm there.

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1   **Q. Okay. Table 2 on page 5. And look at the**
2   **entry for 2011. And according to Dr. Kimball, what's**
3   **the share of ballots cast in overwhelmingly African-**
4   **American precincts for Dr. Graham?**
5   A. Fifty-two percent.
6   **Q. Okay. And I understand that Dr. Kimball**
7   **didn't do the same thing as you did. He seems to be**
8   **dividing -- and correct me if I'm wrong on this. He's**
9   **dividing the votes received in these specific precincts**
10   **by the total number of ballots cast in those precincts;**
11   **is that right?**
12   A. Well, it says share of ballots cast for top
13   choice.
14   **Q. So for --**
15   A. -- So, but, I mean, it -- also in the
16   paragraph below --
17   **Q. Uh-huh.**
18   A. -- he talks about percent of voters. So it's
19   not clear whether he's talking about percent of votes
20   or percent of voters.
21   **Q. Okay. When you did your HP analysis in your**
22   **report, you used -- you did use -- you divided the**
23   **number of votes received for each candidate by the**
24   **number of votes cast. That's what you did, correct?**
25   A. I'm going to check it.

10 (Pages 37 to 40)

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1   Q. Uh-huh.
2   A. I think that's what I did.
3   I believe that's what I did. It says -- I'm on
4   paragraph 40, second sentence. It says: This
5   procedure simply adds up the votes received by each
6   candidate within the precincts that are deemed
7   homogeneous. And so I'm assuming that they are divided
8   by the total number of votes.
9   Q. Your chart starts on page 20 if that helps you
10   at all.
11   A. Okay. Yes. That is labeled Percent of
12   African-American Votes, Percent of non-African-American
13   Votes.
14   Q. Okay.
15   A. So, yes.
16   Q. Okay. In your initial report you -- in your
17   EI analysis you determined that Dr. Graham received
18   twenty-four point one percent of the votes cast,
19   correct?
20   A. Correct.
21   Q. And --
22   A. -- Let me look at it.
23   Q. Uh-huh. It's on page 17.
24   A. Correct.
25   Q. And you -- you stated in your -- in your

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1   rebuttal to Dr. Rodden's that you accepted his numbers,
2   and I think you went ahead and used his numbers? Your
3   numbers were very close. Or your EI analysis.
4   A. Our EI estimates were so close that I believe
5   we could use either set.
6   Q. But when we look at Dr. Kimball's homogeneous
7   precinct analysis, he states that out of six hundred
8   and eighty, and we're not sure if it's ballots or
9   votes, right, based on his explanation, page 5?
10   A. Okay.
11   Q. The six hundred and twenty-eight, you said we
12   don't really know if it's ballots cast or votes cast;
13   is that right?
14   A. Well, we could know if we went to documents
15   that would indicate the number of people that voted or
16   the number of votes.
17   Q. Okay.
18   A. As I said, in the paragraph below --
19   Q. Uh-huh.
20   A. -- he talks about fifty-four percent of
21   voters. So his -- what am I? Fifty-four percent would
22   be, I believe, the Henson analysis?
23   Q. I think you're right on that.
24   A. And so he says fifty-four percent of them
25   voted for Henson. My estimate is forty-three point

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1   seven. So I suspect he is actually looking at number
2   of voters, not number of votes cast.
3   Q. Okay. Which is a lower number?
4   A. Correct.
5   Q. Okay. And you used the higher number? Just
6   to clarify, when you did your HP you did votes cast or
7   voters?
8   A. According to my analysis -- my analysis was in
9   effect seeing how much agreement there was between
10   homogeneous precinct analysis and EI.
11   Q. Correct.
12   A. The EI is a percentage of the votes cast --
13   Q. Right.
14   A. -- in my tables.
15   Q. Okay.
16   A. So I believe that's the same thing I did with
17   HP. Judging from his language, it looks to me like he
18   had the number of ballots cast as opposed to the total
19   votes as a denominator. But that can be -- someone
20   could determine that by simply looking at the documents
21   of how many voted and how many votes were cast.
22   Q. Okay.
23   A. But that would very likely explain any
24   discrepancy between his and mine.
25   Q. Okay.

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1   A. Besides, he has more homogeneous precincts
2   because his cutoff is eighty and twenty.
3   Q. And yours was eighty-five fifteen?
4   A. Right. And I believe -- I suspect he is
5   dealing with percent of voters, like he says in the
6   narrative, as opposed to percent of votes.
7   Q. Okay.
8   A. And share of ballots, okay, that actually is
9   quite consistent with what he put in. I was wrong. He
10   says share of ballots cast for top choice. So that's
11   not inconsistent with saying fifty-four percent of
12   voters.
13   Q. Okay. Okay. And when you say fifty-four
14   percent, you're talking about the 2013 Henson, right?
15   A. Yes. That's what he's talking about on the
16   bottom of page 5.
17   Q. Okay. Are you aware that Dr. Graham served on
18   the Ferguson-Florissant School Board for twenty-two
19   years beginning in 1988?
20   A. I don't know. I mean, I know some of these
21   candidates had been on the board. I don't know
22   specifically about her and when her service on the
23   board began.
24   Q. Okay. And are you aware that in 2002 an
25   election that included four white candidates, two of

11 (Pages 41 to 44)

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1   whom were popular white incumbents, that Dr. Graham
2   received more votes than any other candidate?
3   A. Well, I'm not aware of that, no. I mean, I
4   might have read that in Dr. Rodden's report 'cause he
5   goes back to, I think, 2000. Something like that. But
6   I don't recall it.
7   Q. So thinking about racially polarized voting,
8   how is it that Dr. Graham was able to achieve so many
9   victories over such a long period of time?
10   A. 'Cause she got more votes than other
11 candidates and came in either second or third depending
12 on the number of seats at issue.
13   Q. So based on the history of Dr. Graham being
14 elected to the board, it's still your conclusion that
15 African Americans did not have the opportunity to elect
16 Dr. Graham in 2011?
17   A. Did not have the opportunity? What I can say
18 is they did not elect her. Is it a her? I'm sorry.
19   Q. It is a her.
20   A. They didn't elect her and she was their
21 preference. I mean an opportunity. It wasn't -- yes,
22 I would say like the others, they didn't win the seats.
23   Q. And that's a result of the white vote?
24   A. Well, it's a result of the way the votes were
25 cast but certainly Prong 3 is satisfied. That's a

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1   pretty low crossover.
2   Q. And you're aware that Ferguson-Florissant
3   allows bullet voting?
4   A. Yes, I am.
5   Q. And if a few more African Americans would have
6   bullet voted for Dr. Graham or Dr. Hawkins, wouldn't
7   that have allowed them the opportunity to elect one of
8   their preferred candidates?
9   A. If a few more had bullet voted, I -- I don't
10 know what the result of that would be. Although, I
11 mean, bullet voting does provide an opportunity better
12 than a pure at-large election arrangement. But that
13 opportunity requires the minority voters to withhold
14 part of their ballot.
15   Q. Right.
16   A. That I don't think is a proper way to create
17 an opportunity. It may work in some situations. Most
18 likely when there's only one candidate to be elected.
19 I mean, you know, if the ability is to elect one. The
20 dilution question here is not whether single -- whether
21 a system that allows single-shot voting, how it
22 compares with the pure at-large, the question is how it
23 compares with what a single-member district arrangement
24 would offer.
25   Q. Let's move to a two-seat election. And you

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1   mentioned you shouldn't pay attention to elections with
2   special circumstances so I want to --
3   A. -- No, I don't think I said that.
4   Q. Well, you should consider special
5   circumstances when you look at the results. I want to
6   look at a two-seat election with no special
7   circumstances. Would you agree that 2013 fits that
8   bill?
9   A. Well, special circumstances usually are
10 focused on a winning candidate. In this instance, I
11 mean, I can see, you know, I think we have a situation
12 somewhat limited to -- somewhat similar to 2015 in
13 that -- yeah, there's a -- in this case the second
14 black candidate appears to be a minor candidate. Just
15 like Dameron in 2015 appears to be minor candidate. So
16 that, you know, but other than that, Henson was the
17 choice and did not win.
18   Q. Did you include in your report anywhere that
19 you believed Thomas to be a minor candidate?
20   A. I don't believe so.
21   Q. You testified a few minutes ago that Charles
22 Henson was the only candidate of choice for African
23 Americans?
24   A. I don't think I testified to that. What do
25 you mean by candidate of choice?

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1   Q. A preferred candidate. An MPC, okay?
2   A. Okay. I would describe him as the only
3   preferred representative of choice. Obviously two
4   people are going to be elected. Mathematically you can
5   look at first and second. But second is a long way
6   from first. And in my analysis and I believe
7   Dr. Rodden's analysis. So I would say that Henson was
8   the preferred candidate and was defeated.
9   Q. And he was the only preferred candidate
10 according to your report?
11   A. White candidates can be preferred to lesser
12 degrees. I don't dispute that in my estimate
13 Ms. Hogshead got the second largest percentage of
14 votes. And if you only were adding up the black vote,
15 that she would win a seat.
16   But I don't think that she satisfies Prong 3
17 because I think Henson was clearly the candidate of
18 choice. And he was -- again, shows that African
19 Americans prefer to be represented by people from
20 within their own group in these elections.
21   Q. So your percentage for Mr. Henson was
22 forty-three point seven percent, right?
23   A. Correct.
24   Q. And Dr. Rodden's was thirty-nine percent; do
25 you remember that?

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1   A. I don't remember that. I can look it up.
2   **Q. Okay.**
3   A. Want me to look it up?
4   **Q. No, that's okay.**
5   A. Okay.
6   **Q. If we look at Mr. Kimball's -- or Professor**
7   **Kimball's chart for Mr. Henson -- we've already talked**
8   **about it briefly when you were using it as an example**
9   **previously. He says: In the majority minority**
10   **precincts, using an eighty/twenty breakdown to**
11   **determine those precincts, Mr. Henson received**
12   **fifty-four percent of the African-American vote in**
13   **those precincts?**
14   A. No, I believe he's saying received a vote from
15   fifty-four percent of the African Americans.
16   **Q. Okay. So Mr. Henson was the choice of**
17   **African-American voters in those precincts a little**
18   **more than half of the time; is that accurate?**
19   A. I believe that's in those precincts, yes, that
20   would be accurate.
21   **Q. Okay. And are you aware of what the margin of**
22   **victory was for Mr. Brown over Mr. Henson?**
23   A. No, I don't -- I don't recall what that is.
24   **Q. Actually not Mr. Brown, Mr. -- yeah.**
25   A. Mr. Brown?

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1   **Q. Was it Mr. Brown or Ms. Hogshead?**
2   **Oh, Hogshead, yes. Okay. Yeah, the margin of**
3   **victory of Mr. Brown over Mr. Henson. Mr. Brown was**
4   **second place in this election, correct? Ms. Hogshead**
5   **was first; Mr. Brown was second.**
6   A. Well, given the estimates, that would be the
7   case, yes.
8   **Q. Okay. And would it surprise you to know that**
9   **Mr. Brown had surpassed Mr. Henson by only a hundred**
10   **and twenty-five votes?**
11   A. Wouldn't surprise me.
12   **Q. Okay. And would it surprise you to know that**
13   **there were eight thousand valid votes cast in 2013?**
14   A. Doesn't surprise me.
15   **Q. So according to Dr. Kimball, if Mr. Henson is**
16   **a minority-preferred candidate, that means he won large**
17   **majorities in overwhelmingly African-American**
18   **precincts, right?**
19   A. Means he won large majorities in over -- well,
20   according to Dr. Kimball he got fifty-four percent of
21   the African Americans voting -- voted for him.
22   **Q. Okay. In your report on page 21 in your HP**
23   **analysis, what share do you determine that Mr. Henson**
24   **received in overwhelmingly black precincts?**
25   A. Forty-one point four percent of the votes cast

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1   by black people.
2   **Q. And do you --**
3   A. Excuse me. I shouldn't -- forty-one point
4   four percent of the votes cast in precincts that were
5   eighty-five percent black in VAP.
6   **Q. Okay.**
7   A. Now, there are also crossrace people in those
8   precincts. By that I mean white people or other
9   members of the electorate.
10   **Q. Okay.**
11   A. Not blacks.
12   **Q. Right.**
13   A. And so that figure is specific to the whole
14   precinct, not just to the black people within it.
15   **Q. Okay. So fifteen percent of those precincts**
16   **that you analyzed were non-African Americans; is that**
17   **what you're saying?**
18   A. Fifteen percent of the people?
19   **Q. Of the voters. Voters.**
20   A. Of the voting age population, they could be
21   anywhere from -- I mean, I don't recall the numbers but
22   theoretically from zero to fifteen percent.
23   **Q. Okay.**
24   A. Now, the percent who actually voted in the
25   election could be even higher than that.

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1   **Q. Okay.**
2   A. In terms of that were non-African Americans.
3   **Q. Okay.**
4   A. I mean, this is VAP, voting age population.
5   Excuse me. This is VAP and so that doesn't reflect
6   exactly the racial composition of those who cast
7   votes.
8   **Q. So you don't know whether Mr. Henson received**
9   **a majority of votes cast in the individual precincts,**
10   **correct?**
11   A. In the individual homogeneous black precincts,
12   I would have to go look at precinct level data. My
13   chart doesn't reflect whether it is or is not the case.
14   **Q. Okay. So I'm going to let you answer the same**
15   **way but I'm going to ask the question again. You argue**
16   **that African Americans did not have the opportunity to**
17   **elect their preferred candidate of choice, Mr. Henson,**
18   **even though he lost by only a hundred and twenty-five**
19   **votes, and only received, Dr. Rodden's number,**
20   **thirty-nine percent, which you accepted of the total**
21   **votes cast by African Americans?**
22   A. Well, I believe my conclusion about the
23   opportunity to elect is a conclusion based on all five
24   elections, not a single election. So when I say the
25   opportunity -- I think my text says he lost. I think

13 (Pages 49 to 52)

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1 when I talk about the opportunity to elect, it's based
2 on the entire set of five districts, excuse me, five
3 elections.
4   And then I think there was more to your question.
5   Q. I think you answered it.
6   But you don't deny that Mr. Henson could have won
7 if he received a hundred and twenty-five more votes
8 from African Americans that did -- African Americans
9 that did not support him, correct?
10   MS. EBENSTEIN: Object to the extent it calls
11 for speculation about what could have happened if
12 things happened differently.
13   MS. ORMSBY: Sure.
14   Q. (By Ms. Ormsby) Go ahead.
15   A. If he had one hundred and twenty-five more
16 votes from any source -- and that didn't apply to
17 the -- to -- I think you were talking about Hogshead?
18 You gave me a number of the margin of --
19   Q. Uh-huh.
20   A. -- by which Ms. Hogshead or Brown?
21   Q. No, Mr. Brown.
22   A. Okay. But -- and it was -- now, you just told
23 me one hundred and what?
24   Q. One hundred and twenty-five votes.
25   A. Okay.

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1   Q. Mr. Brown who took second place had a hundred
2 and twenty-five more votes than Mr. Henson who took
3 third.
4   A. Okay. So my answer would be the same. A
5 hundred and twenty-six votes?
6   Q. Uh-huh.
7   A. Or twenty-five votes more were cast for Henson
8 than were not cast for Brown, regardless of the source,
9 Henson would have won a seat. The source could have
10 been black voters; the source could have come from
11 white voters.
12   Q. And are you aware that Mr. Henson served on
13 the Ferguson-Florissant School Board for seven years?
14   A. I'm aware that he had served on the board
15 before. I don't know the length of time.
16   Q. Okay. And are you aware that he had been
17 actually president of the school board during that
18 seven years?
19   A. I don't recall it. I don't know if I read
20 that or not.
21   Q. Okay. All right. So continuing through the
22 present, you believe that the most recent elections are
23 most probative as long as there's not special
24 circumstances involved; would that be a fair statement?
25   A. I think that's a fair statement.

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1   Q. Okay. So is it your view we should cut off
2 and not consider elections that are prior to the
3 special election -- special circumstance election?
4   A. That we should cut it off before 2015?
5   Q. Yeah, should we cut off --
6   A. As I said, I think you have to exercise
7 caution in using 2015. It was quite different than
8 previous elections. And it was, I believe -- well, it
9 was -- there are lots of differences between 2015 and
10 the previous two-seat elections. That creates
11 possibilities of manipulating the candidate pool. So I
12 would -- I would not give it equal value to the other
13 four. I didn't ignore it.
14   And I think it may be better to -- it might be
15 better to look at the first four and then as comparable
16 in that sense; although, some were three, some were
17 two, and they are different elections.
18   Q. Uh-huh.
19   A. But -- where was I? Sorry.
20   Q. I think you answered the question. And I'm
21 going to talk specifically about 2015 in just a minute
22 but I want to talk about 2014 first.
23   A. Okay.
24   Q. If you want to turn to your chart, can you
25 tell me how many African-American candidates were

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1 running?
2   A. Five.
3   Q. And how many white candidates were running?
4   A. Three.
5   Q. And how many minority-preferred candidates did
6 you identify?
7   A. Well, it's a three-vote election and I believe
8 the top three in terms of votes got somewhere above
9 seventy percent of the votes cast by blacks. I would
10 say that that shows a preference for all of the top
11 three African-American candidates among the
12 African-American voters.
13   Q. Okay. And the top minority-preferred
14 candidate won; is that correct?
15   A. Correct.
16   Q. But then you classify Savala and Johnson as
17 losing candidates of choice, correct?
18   A. Correct.
19   Q. Do you know how many votes Mr. Savala fell
20 short of winning the election?
21   A. No, I don't.
22   Q. Would you be surprised to know that he trailed
23 the third place finisher, Mr. Morris, by ninety-one
24 votes?
25   A. No.

14 (Pages 53 to 56)

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1   Q. Okay. And according to your EI analysis of
2   your report, who was the fourth place finisher among
3   African Americans?
4   A. Wallace.
5   Q. And what vote share did he receive?
6   A. Eight point six.
7   You're asking about the African-American vote?
8   Q. Yes.
9   A. Eight point six percent of the votes cast by
10   African Americans.
11   Q. And Mr. Wallace is African American; is that
12   right?
13   A. That's my understanding.
14   Q. Okay. So is it fair to say that although the
15   three candidates of choice could be identified for
16   three seats, votes of African Americans were
17   inefficiently split among the other three -- the other
18   candidates, African-American candidates?
19   A. Let's see. The other candidates got about
20   thirteen percent of the black vote. Is that the way
21   you maximize your vote, no. But maximization isn't
22   required for racially polarized voting. As I say, if
23   he got ninety-one more votes, is that it?
24   Q. He needed ninety-one.
25   A. He needed ninety-two -- ninety-one?

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1   Q. Uh-huh.
2   A. Okay. And this is Savala?
3   Q. It is.
4   A. Right. And he got seven percent of the
5   non-African-American vote. Johnson got two point eight
6   percent of the African-American vote. There certainly
7   are a sort -- a lot of room for growth among the
8   non-African-American voters support for the
9   African-American candidate.
10   Q. Do you agree that the African-American
11   candidates collectively received more votes than the
12   white candidates collectively?
13   A. I don't recall. I don't remember.
14   Q. If that is the case, if African-American
15   candidates collectively received more votes than the
16   white candidates, how is it that only one
17   African-American candidate won?
18   A. Because only one African American came in the
19   top three in the total vote.
20   Q. And that could be because African Americans
21   split their votes among the other African-American
22   candidates?
23   A. Well, you've got five votes and --
24   Q. I'm sorry. You have three votes, correct?
25   A. I mean five black candidates.

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1   Q. Okay.
2   A. So as I see it here, it's roughly thirteen
3   percent of the African Americans voted for the other
4   two black candidates. None of them are close to the
5   three that were the top among African-American voters.
6   So, I mean, what you're saying is, sure, if
7   they -- perhaps if they had spread that thirteen around
8   to the -- to -- given them to Savala and Johnson,
9   perhaps, I haven't seen the numbers, that they could
10   have won. But, you know, that's a what if and we're
11   dealing with reality here, you know.
12   If you could have won if the election was --
13   people behaved differently, then okay, you could have
14   won if that happened. Just like I say. It could have
15   happened if more white voters crossed over to vote for
16   these other two, the second and third place black
17   candidates.
18   Q. Could they have won if the African Americans
19   had voted more cohesively?
20   A. Well, as I said, there's only thirteen percent
21   not going to those candidates. And then very small
22   percentages going to the three white candidates. I --
23   I mean, it's always the case if more votes had been
24   cast for, say, the top three candidates, they'd have a
25   better chance of winning. Just like, as I say, if the

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1   crossover vote for those two black candidates weren't
2   so minimal, then they might have won as well.
3   Q. So let me be more specific. If the
4   African-American voters had voted more cohesively for
5   the top three candidates, Paulette Thurman, Savala, and
6   Johnson, wouldn't they have elected all three black
7   candidates?
8   A. Well, you're saying including more votes for
9   Paulette Thurman. So if the votes were cast for Savala
10   and Johnson and that resulted in the three candidates
11   coming in first, second, and third in the total vote,
12   then yes. It's a tautology. I mean, you're setting
13   up -- you're talking about a hypothetical, and if it
14   had happened, I'd have to look at the numbers because I
15   don't know how far back Johnson was looking at this
16   chart.
17   But as I said, if it would have been different, it
18   would -- it could have been different. But this is
19   what really happened. I don't think there's any
20   dispute over the numbers. At least, you know, not in
21   terms of the EI estimates.
22   Q. Okay.
23   A. And the other homogeneous by Dr. --
24   Q. Rodden?
25   A. No. Campbell are a different -- or a

15 (Pages 57 to 60)

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1 percentage of something different than what I wrote in
2 my report.
3   Q. But is it your opinion that despite the fact
4 that more than half of the votes cast in this election
5 were cast for African-American candidates, that this
6 was a racially polarized election? Is that --
7   A. -- Yes.
8   Q. And that --
9   A. You can tell from the candidate choices here
10 that this is a racially polarized election resulting in
11 only one seat of the three going to an African-American
12 candidate.
13   Q. So if the election were highly polarized and
14 African-American candidates received a majority of the
15 votes cast, can you explain the logic through which
16 white block voting explains the fact that
17 African-American candidates of choice failed to sweep
18 the election?
19   A. Failed to what?
20   Q. Sweep the election.
21   A. Sorry. Can you repeat the question, please?
22   Q. If the election was highly polarized and
23 African-American candidates received a majority of the
24 votes cast, can you explain the logic through which
25 white block voting explains the fact that

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1 African-American candidates of choice failed to sweep
2 the election?
3   A. Sure. The crossover vote for Savala, the
4 crossover vote for Johnson, and the more cohesive vote
5 for the three black, excuse me, three white candidates
6 in the race among white voters.
7   Q. All right. Now let's go to 2015.
8   MS. ORMSBY: If I can get through this
9 election, Julie, I think it would be a good place to
10 stop.
11   MS. EBENSTEIN: Okay. Sure.
12   MS. ORMSBY: And take a lunch break.
13   Q. (By Ms. Ormsby) So the title of your section
14 of your report dealing with the 2015 election is The
15 Postlitigation Election of 2015; is that right?
16   You can look at it.
17   On page -- on page 11. Top of page 11.
18   A. All right. Of my initial report. I believe I
19 also address it in my rebuttal report.
20   Q. Okay. If you could look at paragraph 32 of
21 your initial report. And you state that the special
22 circumstances could have influenced the election in
23 favor of Dr. Graves; is that correct?
24   A. Let me read it, please.
25   Q. Uh-huh. Sure.

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1   A. I don't think I mentioned Dr. Graves in that
2 paragraph.
3   Q. Okay. But you do state that the fact that
4 this litigation was filed could have affected the
5 election, right?
6   A. Yes.
7   Q. Are you familiar with the amount of publicity
8 this case received in the St. Louis media market?
9   A. No. But I am familiar with the fact that this
10 happened after the incident in Ferguson.
11   Q. Would you change your opinion that this
12 litigation could have influenced the election if you
13 learned that this litigation was only reported on the
14 day that the litigation was filed within the St. Louis
15 market on December 18th, 2014?
16   A. No.
17   Q. Would it change your opinion that this
18 litigation could have influenced the election if you
19 learned that on December 18th of 2014 three TV stations
20 spent less than thirty seconds on the story and have
21 never mentioned it again?
22   A. On the story being this litigation?
23   Q. This litigation.
24   A. No.
25   Q. So is it your opinion that this story reported

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1 one day in December influenced voters in April?
2   A. I don't know if the story influenced voters or
3 the candidate pool influenced voters.
4   Q. But you state in your opinion that you believe
5 the litigation could have influenced the election; is
6 that right?
7   A. I say the election was postlitigation. And I
8 believe what I focus on is the very different type of
9 candidate pool in 2015 compared to the previous two
10 vote elections and the different kind of
11 non-African-American voting behavior in that election.
12   Q. And we're going to get to that but I want to
13 focus on the litigation at this point in time.
14   So you're saying it's not necessarily the filing
15 of this litigation that affected the election?
16   A. The filing of the litigation might have
17 affected the candidate pool.
18   Q. But not the voters?
19   A. It may have influenced some voters.
20   Q. And in order for it to have influenced voters,
21 they would have had to hear the story on December 18th,
22 correct?
23   A. If the story of the litigation influenced the
24 voters?
25   Q. Uh-huh.

16 (Pages 61 to 64)

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1   A. Or the result of change in the candidate pool?
2   **Q. I'm talking strictly of the litigation.**
3   **Whether the litigation -- filing of this litigation**
4   **influenced the election -- the voters in this election.**
5   A. We don't know the extent to which that may or
6   may not have occurred.
7   **Q. But you would agree that in order for it to**
8   **affect the voters in this election, they would have had**
9   **to have first known about the story?**
10   A. No.
11   **Q. No?**
12   A. In order to affect the voters -- the effect on
13   the voters may well have been the candidate pool which
14   was -- could have been a function of the litigation.
15   **Q. So just to be clear, you are not saying that**
16   **the fact that this litigation was filed had any effect?**
17   **Just the fact that this litigation is filed, that it**
18   **had no effect, no voter went to the polls and said this**
19   **litigation was filed and I'm going to influence the**
20   **outcome of the litigation? That's not your testimony?**
21   A. No. My testimony is that the litigation, it
22   could have affected some voters by itself. But it
23   looks to me like the very difference in the candidate
24   pool after the litigation was filed could have then
25   influenced voters. I don't believe voters have to have

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1   all that knowledge.
2   They go to the poll and they see one white
3   candidate and a second white candidate that's a very
4   minor candidate. At least given the kind of voter
5   support she had from each group. Which means their
6   choice really is, if they're not interested in the
7   minor candidate, and my estimate here is that only nine
8   point nine percent of the white voters voted for the
9   minor white candidate, and a two-vote election meant if
10   they weren't going to vote for that minor black
11   candidate, then they had to cast that other vote for
12   one of the three black candidates or withhold their
13   vote.
14   **Q. Is there any political science research that**
15   **shows that filing of litigation influences the**
16   **candidate pool?**
17   A. There are -- is there any political science
18   research?
19   **Q. Uh-huh.**
20   A. Sure. I'm a political scientist and I have
21   found that present in post litigation elections fairly
22   often.
23   **Q. Other than you, is there any published**
24   **research on this fact, that filing of litigation**
25   **influences the candidate pool? Is there anyone besides**

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1   **you that says that?**
2   A. I don't recall.
3   **Q. Are you aware of any publications that say**
4   **that?**
5   A. Court cases, decisions.
6   **Q. Which court cases say that litigation -- the**
7   **fact that a litigation has been filed has influenced**
8   **candidate pools?**
9   A. I believe there's a concern about that in the
10   Irving Independent School District case in Texas.
11   **Q. And has the court determined that the**
12   **litigation filed influenced the candidate pool?**
13   A. I believe the court took note that the
14   candidate pool was contrary to history in the
15   postlitigation election.
16   **Q. Did the court find that it influenced the**
17   **candidate pool?**
18   A. I don't recall if the court found it. The
19   court referenced the special circumstance situation in
20   that case.
21   **Q. But will you admit to me that you are not**
22   **aware of any peer-reviewed publication that makes the**
23   **determination that the filing of litigation influences**
24   **the candidate pool in an election?**
25   A. I'd have to look at it. There is an article

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1   in Election Studies, which is a peer-reviewed
2   publication.
3   **Q. And when was that?**
4   A. Maybe the -- might be the late '80s. And it
5   talks about the change in the candidate pool. I don't
6   know if it's point on to what you're asking.
7   **Q. Okay.**
8   A. It could be. I forget when the litigation may
9   have been filed or -- there was litigation, I know, but
10   the article shows that the first election that we
11   studied was the non-African-American voters dispersed
12   their votes allowing single-shot voting to result in
13   the election of a black candidate.
14   The next election, non-African-American voters
15   didn't disperse their votes much and cancelled out the
16   choice of the African-American voters.
17   Where litigation came in, I'm sorry, I don't
18   remember.
19   **Q. So it's not your opinion that the filing of**
20   **this litigation affected how -- the filing -- let me**
21   **start all over. I don't want to put words in your**
22   **mouth.**
23   **Is it your opinion that the filing of this**
24   **litigation was remembered by white voters when they**
25   **went to the poll and they voted a specific way as a**

17 (Pages 65 to 68)

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1   **result of this litigation being filed?**
2   A. I think I've answered that. I said some
3   voters may have been influenced, may have been
4   influenced by the litigation. White voters that may
5   not wanted to have a change to single-member districts.
6   White voters who have been -- may have been told by
7   others as litigation and they want a change and that
8   sort of thing. That would be a direct effect. I don't
9   know how much that happened.
10   There's also the second, the indirect or second
11   effect, which is the candidate pool changed after the
12   litigation was filed different from the previous two
13   candidate pools. And basically -- and I've seen this
14   before. I saw this in Norfolk. To create an open seat
15   in effect for a, in that case, African-American
16   candidate.
17   In the Irving Independent School District, after
18   the litigation was filed they create -- all of a sudden
19   a Latino ran unopposed for the first time in the
20   history of the school district. And this is a similar
21   situation.
22   You know, only one, I would say, serious black --
23   or white candidate, I'm sorry, but, I mean, I base that
24   again on the kind of votes they received.
25   But the second seat, I believe, was -- became much

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1   more reachable by African-American voters because the
2   other black -- other white candidate was a minor
3   candidate.
4   Q. **Your supposition that -- or your thought that**
5   **the filing of this litigation could have influenced the**
6   **candidate pool would require that at least the**
7   **candidates were aware of this litigation; is that**
8   **correct?**
9   A. Actually, I don't know that the candidates
10   would be aware of it. But the candidates may have been
11   encouraged in some cases not to run, potential
12   candidates. That can be influenced by people saying
13   you're not going to get endorsements, you're not going
14   to get much money, or whatever. We prefer you not run.
15   Leaving one major white candidate and one minor white
16   candidate in a two-vote, two-seat election which could
17   have opened the door better than any of the previous
18   elections to an African-American candidate winning one
19   of the seats.
20   Q. **And you would have no reason to doubt a**
21   **candidate or an incumbent who decided not to run that**
22   **year who testified under oath of the reasons for which**
23   **he decided not to run, you would have no reason to**
24   **doubt his reasons, correct?**
25   A. I would have to hear what his reasons were.

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1   Q. **So you could doubt him?**
2   A. I don't know who the candidate is. I don't
3   know what his integrity is. You're telling me he said
4   this.
5   Q. **Uh-huh. If he said that, if he gave his**
6   **reasons under oath in a deposition on why he didn't run**
7   **for reelection, or should we discount his reasons?**
8   A. I don't know whether we should or should not.
9   Q. **Okay. And would it surprise you that the**
10   **candidates who ran in the 2015 election and won, both**
11   **Dr. Graves and Mr. Ebert, testified in their deposition**
12   **that not a single person mentioned this lawsuit to them**
13   **at any point in time prior to filing, while**
14   **campaigning, or working the polls on election day?**
15   A. That they never heard of the litigation?
16   Q. **That not a single person mentioned this**
17   **litigation to them.**
18   A. But that doesn't mean they weren't aware of
19   it.
20   Q. **If they testified that they weren't aware of**
21   **it?**
22   A. That they were not aware of the litigation?
23   Q. **Yes.**
24   A. And they're on the school board? The one of
25   them was.

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1   Q. **One of them was.**
2   A. Yes.
3   Q. **But the unincumbent did not know of this when**
4   **she filed to run, that wouldn't surprise you? I**
5   **already asked you that.**
6   A. No, I don't think that would surprise me. She
7   doesn't have to know about the litigation to run.
8   Q. **Okay.**
9   A. If Ebert said he didn't know about it, that
10   would surprise me.
11   Q. **Okay. Is there any political science research**
12   **that identifies a situation like this where people**
13   **voted strategically to affect lawsuits?**
14   A. And you're saying published in political
15   science; is that right or?
16   Q. **I didn't ask that yet.**
17   A. Oh, okay.
18   Q. **My question was, Is there any political**
19   **science research that identifies a situation like this**
20   **where people voted strategically to affect lawsuits?**
21   **My next question will be is it published. But my**
22   **first question, is there any research?**
23   A. And you're saying this research would have
24   documented strategic voting on the part of voters?
25   Q. **Uh-huh.**

18 (Pages 69 to 72)

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1   A. I don't -- I don't recall a particular study.
2   Q. Okay. Is there any political science
3 literature or research saying that the reaction of
4 whites to a racially polarizing event is to vote for
5 black candidates?
6   A. That the reaction of whites?
7   Q. In reaction to a racially polarizing event,
8 that the reaction of whites is to vote for black
9 candidates?
10   A. I don't recall it.
11   Q. And likewise, is there literature suggesting
12 that the reaction of blacks to a racially polarizing
13 event is to vote for white candidates?
14   A. I don't recall it.
15   Q. Okay. And you acknowledge that the candidate
16 who received the second most black votes was Dameron,
17 correct?
18   A. Correct. In 2015.
19   Q. And Dameron is a white candidate, correct?
20   A. Correct.
21   Q. So considering these facts, do you believe
22 that most political scientists would conclude that this
23 lawsuit influenced the 2015 election at all?
24   A. I don't know what most political scientists
25 would conclude. I certainly think a lot of expert

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1 witnesses would understand that this could have
2 impacted the results of the 2015 election.
3   Q. And it's still your opinion that this lawsuit
4 influenced the 2015 election?
5   A. I said this was a special circumstance. Now,
6 I don't have evidence. I mean, I don't have what would
7 be called the smoking gun. But a smoking gun isn't
8 needed to reach the inference. The court doesn't have
9 to find a smoking gun. It can find circumstantial
10 evidence that would support that conclusion.
11   Q. And what circumstantial evidence is there that
12 would support that conclusion?
13   A. The difference in the candidate pool.
14   Q. From when?
15   A. From the four -- from the previous two-seat
16 elections under analysis.
17   Q. So for the record once again, how many
18 African-American candidates of choice did you identify
19 for the 2015 election?
20   A. How many candidates of choice what?
21   Q. Did you identify. Minority-preferred
22 candidates did you identify for the 2015 election?
23   A. I believe one.
24   Q. And why do you not identify any other
25 candidates of choice?

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1   A. Well, the second choice got fourteen point
2 five percent of the vote.
3   Q. And to be clear, the minority-preferred
4 candidate in this election is Dr. Graves?
5   A. Correct.
6   Q. So you've stated that African Americans
7 typically prefer African-American candidates in
8 Ferguson-Florissant. So I'm wondering, why do you
9 think it is that neither of the other two
10 African-American candidates is a candidate of choice
11 for African Americans?
12   A. Well, in 2015, is that what we're?
13   Q. Uh-huh.
14   A. Okay. Certainly Dr. Rodden says Graves
15 campaigned for single-shot votes. That also there is
16 no evidence of that occurring in the previous
17 elections. And the U.S. Supreme Court has specifically
18 said that single-shot voting is one of the special
19 circumstances that might result in the aberrant
20 election of a minority-candidate.
21   Q. Okay. So in your report you characterize
22 Ms. Dameron as a minor candidate. And since your
23 estimate suggests that she's the second place finisher
24 among African Americans, presumably do you mean that
25 she's a minor candidate among whites?

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1   A. Given her electoral support, I would say she's
2 a minor candidate across the board.
3   Q. Okay. And, in fact, whites preferred
4 African-American candidates over her; is that right?
5   A. Yes.
6   Q. And you're not making any sort of judgment
7 about her capabilities or her attractiveness as a
8 candidate as a result of being a minor candidate,
9 correct?
10   A. No. I'm looking at the estimates. I think
11 they're the same for Mr. Rodden -- Dr. Rodden and I
12 show that this is a minor candidate. Her black vote
13 was fourteen point five percent. Her white vote was
14 nine point nine percent.
15   Q. And we talked about this briefly, but going
16 back to the 2013 election, you would also identify
17 Mr. Thomas as a minor candidate; is that right?
18   A. Yes.
19   Q. So is it your claim that absent special
20 circumstances African Americans cannot elect candidates
21 of choice, but in 2015 there was a special circumstance
22 related to Ms. Dameron's status as a minor candidate?
23   A. Well, also related to Ms. Graves' campaign,
24 which was to solicit single-shot votes. And I think
25 there are other things that I specialize in the report

19 (Pages 73 to 76)

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1 that I don't have memorized right now.
2   Q. Uh-huh.
3   A. And in the rebuttal report as well, things
4 pulled from Rodden's report.
5   Q. Uh-huh.
6   A. That in effect said, Wow, 2015 was really
7 different than everything that had gone before.
8   Q. So since whites did not prefer Ms. Dameron to
9 black candidates like Hines and Person, are you stating
10 that this opened the door to victory by Dr. Graves?
11   A. It certainly facilitated that.
12   Q. Okay. And you're stating that there was no
13 solid white second candidate so this allowed Dr. Graves
14 to get an unusually large number of white crossover
15 votes and achieve victory?
16   A. First of all, I didn't say -- how did you
17 describe her? Not a solid candidate?
18   Q. Since there was --
19   A. -- I never said anything about solid. I have
20 said clearly that based on the votes she received,
21 she's a minor candidate.
22   Q. Okay. So --
23   A. Now, on the crossover vote, that's a spot
24 where, who knows, people that didn't want single-member
25 districts might have all of a sudden decided they're

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1 going to vote for Graves or Hines. That hadn't
2 happened previously.
3   Q. So we're back again --
4   A. -- Specifically we're back to -- except in the
5 previous two-vote elections whites were not giving that
6 kind of crossover vote to even one black candidate, let
7 alone two.
8   Q. So again, you said maybe people didn't want
9 single-member districts so they voted for a black
10 candidate? You just said that, right?
11   A. I just said that. Maybe there could be some.
12 I wouldn't doubt that.
13   Q. But we've already established the fact that
14 there's not even circumstantial evidence to indicate
15 that that's the case, correct?
16   A. Well, circumstantial evidence could be based
17 on the fact that Dameron was a minor candidate in
18 the -- in the white candidate pool that got very little
19 non-African-American votes. All right? Again, that
20 had not happened before. No, excuse me. Graves then
21 gets over twenty percent and Hines gets over twenty
22 percent.
23   There's not a two-vote election previously that I
24 have looked at that matches that kind of behavior.
25 Doesn't even come close. So this election was

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1 different.
2   Q. And when you say there's not a previous
3 election, you're talking in the last five elections?
4   A. The ones I analyzed.
5   Q. You didn't analyze any prior to that, correct?
6   A. No. I'm looking at recent elections.
7   Q. Okay. Just wanted to clarify that when you
8 say there's not a previous election, you're only
9 talking about the previous -- the last five elections.
10   A. Well, previous to this would be the last four.
11   Q. Okay. Thank you.
12   And we've already established that there's no
13 political science literature that states that filing of
14 this litigation causes voters to then go and elect a
15 certain candidate because they're against single-member
16 districts?
17   A. No. I don't think I said there's none, I said
18 I don't recall any.
19   Q. Okay. If you can find some, will you give it
20 to your attorney to provide to us because we've been
21 unable to find any.
22   A. If my attorney asks me to do it.
23   Q. Okay. Great.
24   Let me put it this way. If you plan to rely on
25 any at trial, I'll ask him to please give me the

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1 literature if you can find it.
2   MS. EBENSTEIN: Of course if he relied on
3 anything at trial, we'll give it to you beforehand.
4   Q. (By Ms. Ormsby) So whether -- whether whites
5 likes Mr. Hines or Dr. Graves or disliked Ms. Dameron,
6 how is it any different from simply observing that
7 whites cast crossover votes for Dr. Hines and -- I
8 mean, Mr. Hines and Dr. Graves instead of voting for
9 Dameron?
10   A. How is it? I'm sorry, how is it?
11   Q. How is it different from just simply observing
12 whites cast crossover votes for Mr. Hines and
13 Dr. Graves?
14   A. Well, the difference is it hasn't happened
15 like that before.
16   Q. Well, couldn't it --
17   A. In the ones I analyzed.
18   Q. Couldn't it be the case that Dr. Graves and
19 Mr. Hines live in majority white neighborhoods and got
20 a lot of support from their white friends and
21 neighbors?
22   A. I don't know where their support came from.
23 All I know is that's not happened in the other
24 elections I analyzed.
25   Q. But that could be the case, right?

20 (Pages 77 to 80)

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1   A. Well, it could be the case that other black
2 candidates lived in white neighborhoods and didn't get
3 this kind of support in previous elections.
4   Q. Couldn't it be the case that they knocked on a
5 lot of doors of a lot of houses occupied by both black
6 and white voters?
7   A. I would hope all candidates go to both racial
8 areas and knock on houses in a way that is not racially
9 selective.
10   Q. But can we agree that not all candidates
11 campaign in the same way?
12   A. Well, I think so, yes.
13   Q. And can we agree that some candidates work a
14 lot harder than others?
15   A. I believe that's the case.
16   Q. Okay. So you don't believe you're being
17 cynical when you state that white support for black
18 candidates cannot possibly be sincere? That there has
19 to be some failure on the part of a white candidate or
20 there has to be some sort of special circumstance that
21 makes them want to vote for the black candidate in
22 order to thwart the election?
23   MS. EBENSTEIN: I'm going to object that that
24 mischaracterizes his previous testimony.
25   MS. ORMSBY: Okay.

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1   A. Yeah. I don't believe I said anything about
2 sincere. And there is sincere voting. There is
3 strategic voting. Are you talking about that, or what
4 do you mean in that context by sincere?
5   Q. (By Ms. Ormsby) Are you stating that -- or
6 let me put it this way.
7   Do you agree that there -- in this election there
8 could have been sincere white crossover voting for
9 Dr. Graves because they believed she was the best
10 candidate for the job?
11   A. You mean the reason they voted for her was
12 simply because she was the best candidate?
13   Q. Right.
14   A. Out of this candidate pool?
15   Q. Yes.
16   A. It's possible.
17   Q. Okay.
18   A. Sure.
19   Q. If you could turn to page 21 of your report,
20 which is your HP analysis I believe.
21   A. My what analysis?
22   Q. HP.
23   A. Oh, okay. HP?
24   Q. Twenty-one is.
25   A. Twenty-one is H.

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1   Q. No, no, no, no, no.
2   A. Oh, homogeneous precinct?
3   Q. Yes.
4   A. My apologies. I'm sorry. When you said
5 twenty -- okay.
6   Q. Okay.
7   A. All right. And I'm at twenty-one which is
8 homogeneous. Correct.
9   Q. Okay. Your estimate in 2013 for Mr. Henson
10 was twenty point four percent; is that right?
11   A. Of the white crossover.
12   Q. Right. And if you scan down then, what's your
13 estimate of the white crossover --
14   A. -- May I? I'm sorry.
15   Q. Uh-huh.
16   A. To be clear.
17   Q. Uh-huh.
18   A. In what we're identified as white homogeneous
19 precincts?
20   Q. Correct.
21   Okay. And if you scan down further on the page,
22 what is that number for Dr. Graves?
23   A. Twenty-one point four.
24   Q. So one percentage point different, correct?
25   A. Yes.

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1   Q. So isn't it odd that there would be a special
2 circumstance when the white crossover vote is so
3 similar between those two candidates in two different
4 elections?
5   A. Is it odd?
6   Q. Uh-huh.
7   A. We don't --
8   Q. You stated there was --
9   A. -- I mean, first of all, these are precincts
10 that are less than -- these are precincts that are up
11 to fifteen percent black, excuse me, white -- or excuse
12 me, non-African American. They may not even be the
13 same precincts. I'd have to look at the footnote to
14 see if -- 'cause I've given differences in population.
15 Sometimes there are more; sometimes there are less.
16   But -- and we don't know -- as I say, that's the
17 percent of the vote in those precincts. And not only
18 did Graves get it but Hines got twenty-one point one
19 percent according to this.
20   Q. Okay. So I don't believe you did this
21 calculation but you did -- you did suggest that
22 Dr. Rodden's EI estimates and yours were very similar
23 to each other, correct?
24   A. You said you don't think I did this analysis?
25   Q. That was a bad -- that was a bad question.

21 (Pages 81 to 84)

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1   A. Okay.

2   **Q. Thank you for calling me on it.**

3   **You agree that Dr. Rodden and your EI analysis**

4   **ended up with very similar numbers, correct?**

5   A. Yes, I do agree with that.

6   **Q. So would it surprise you that when**

7   **Dr. Rodden -- that Dr. Rodden analyzed the white**

8   **support of Gwen Thomas, Doris Graham, and other**

9   **African-American candidates that they routinely**

10   **received around twenty percent of white support in the**

11   **past?**

12   A. I don't know that. I mean, I'd have to look

13   at his report.

14   MS. EBENSTEIN: Since we have a number of

15   candidates named Thomas, can you specify which Thomas

16   you're asking about?

17   MS. ORMSBY: It's Gwen Thomas.

18   MS. EBENSTEIN: Which area is she in?

19   MS. ORMSBY: I think these were in previous

20   elections so he would -- Dr. Engstrom wouldn't have

21   done those calculations.

22   MS. EBENSTEIN: Okay.

23   **Q. (By Ms. Ormsby) Just a couple more questions**

24   **and I think we hit on this. You do identify Mr. Thomas**

25   **in 2013 as a minor candidate; is that right?**

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1   A. Yes.

2   **Q. And so would your same logic apply that there**

3   **was lots of black crossover vote to support Hogshead**

4   **and Brown, which helped push them over the top to win**

5   **over Henson?**

6   A. I'd have to look at the numbers to say that it

7   did push them over the top. It certainly could have

8   been -- could have affected that.

9   **Q. And would that be any different than the**

10   **analysis you did in 2015 with regard to Dr. Graves and**

11   **the minor candidate Ms. Dameron?**

12   A. I would say it's fairly similar. It doesn't

13   have five candidates but it's still basically in the

14   African-American side. One candidate that's clearly

15   the choice and one candidate that appears to be minor.

16   So if you're not -- if African-American voters are not

17   going to vote for Thomas for whatever reason but, I

18   mean, he got a very small vote from them. If they're

19   going to use their second vote, they have a choice

20   between two whites. That's it.

21   **Q. And that would cause them -- the white**

22   **candidate to win over the minor candidate, correct?**

23   A. I don't know if it caused it.

24   **Q. Okay.**

25   A. I mean, I don't know. I'd have to look at the

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1   numbers to see if that actually was part of the cause.

2   MS. ORMSBY: Okay. I think this is a great

3   place to stop for lunch. It is ten after 12:00.

4   (Lunch break.)

5   **Q. (By Ms. Ormsby) Dr. Engstrom, while we were**

6   **on break did you discuss any of your answers to the**

7   **deposition with your attorneys?**

8   A. No.

9   **Q. All right. Let's -- I want to ask you some**

10   **questions about the American Community Survey. The**

11   **ACS. Do you find -- do you consider the ACS reliable?**

12   **Do you know what it is first?**

13   A. Yes.

14   **Q. Okay.**

15   A. I know what it is. I don't myself use it

16   much. I know in some of the smaller jurisdictions you

17   can get pretty high standard confidence intervals and

18   things. But I'm not a demographer.

19   **Q. Have you ever used the ACS when you've**

20   **analyzed VRA cases in the past?**

21   A. I believe I had data that was probably from

22   ACS and given to me.

23   **Q. Uh-huh.**

24   A. Latino cases. Citizenship often matters and

25   often the ACS is the source of citizenship data for the

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1   registered polarized voting analysis. Might start

2   saying RPV; is that all right?

3   So, yes, in that sense. And sometimes, if I was

4   dealing with demographics, I would look at the more

5   recent estimates out of the ACS rather than an old

6   census.

7   **Q. Did you testify or provide an expert report in**

8   **university -- university -- got that on the brain --**

9   **United States of America v. Euclid City School District**

10   **Board of Education? I think it was in your deposition.**

11   **I think it was taken in May of 2009.**

12   A. I believe so.

13   **Q. And is that a Section 2 VRA case?**

14   A. This is the Euclid City School District?

15   **Q. Uh-huh.**

16   A. Okay. Yes, I did testify in that case.

17   **Q. And that's a Section 2 VRA case?**

18   A. Yes. When I was involved it was strictly a

19   remedial portion, I believe.

20   **Q. Did you rely on the ACS to calculate the black**

21   **voting age population in that case?**

22   A. I don't recall.

23   MS. ORMSBY: Can I have the Engstrom depo,

24   please.

25   (Defendant's Exhibit J was marked for

22 (Pages 85 to 88)

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1   identification.)
2   Q. (By Ms. Ormsby) Turn to page 26.
3   A. I'm there.
4   Q. Are you there?
5   A. Yep.
6   Q. You've got answer, question, answer, question,
7   answer, question. And the question reads: Isn't it
8   true that your conclusion is based solely on your
9   calculation that the black percentage of the voting age
10   population in Euclid according to the 2005-2007
11   estimate for the American Community Survey is a hundred
12   and sixty point eight percent of the threshold of
13   exclusion for a three-seat election and a hundred
14   twenty point seven times the value of a threshold for a
15   two-seat election?
16   Did I read that question correctly?
17   A. You read the transcript correctly, yes.
18   Q. Okay. And then you -- there's some -- you
19   asked to get clarification, or you asked me if I said
20   that in the report. There's another question that has
21   to do with the same thing if you want to peruse it.
22   And then finally you give your answer: Well, my
23   conclusion is based on the fact that the voting age
24   population based on the ACS survey is substantially
25   higher, I would say, than the threshold of exclusion.

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1   Did I read your answer correctly?
2   A. Yes, you did.
3   Q. Okay. So would you say that you did rely on
4   the ACS?
5   A. Part -- you read half of that answer
6   correctly.
7   Q. Oh, okay.
8   A. You read the first sentence correctly.
9   Q. Okay.
10   A. I don't know if you -- the other's relevant.
11   Q. I just want to make the point that you relied
12   on the ACS --
13   A. Okay.
14   Q. -- for this; is that correct?
15   A. That could be correct. According to the
16   transcript.
17   Q. Have you ever been involved in a VRA case
18   where the BVAP is fifty percent or higher?
19   A. I'm not recalling one.
20   Q. How about one forty-nine percent or higher?
21   A. Once again, I don't -- I don't remember the
22   VAP numbers for -- I've done a lot of cases, so.
23   Q. Do you remember approximately what the highest
24   BVAP that you can remember in a case that you've
25   involved in?

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1   A. I don't know what that would be.
2   Q. Okay. One of the experts in this case
3   determined that according to the ACS, forty-eight point
4   nine percent of the voting age population is single
5   race black and forty-seven point two four percent is
6   single race -- I mean is white VAP?
7   A. So forty-eight point nine is black VAP?
8   Q. Yeah, single race black. And forty-seven
9   point two four is single race white VAP.
10   A. Okay.
11   (Interruption.)
12   Q. (By Ms. Ormsby) So in other words, African
13   Americans with these numbers are a plurality of the
14   voting age population. Have you ever -- go ahead. Do
15   you disagree with that?
16   A. Oh, this is based on solely one race --
17   Q. Right.
18   A. -- for the both groups.
19   Q. Correct?
20   A. This would be a plurality. Yes. Based on
21   these numbers it would be a plurality.
22   Q. Okay. Have you ever been involved in a case
23   where the minority and white VAP are so close using a
24   plaintiff's expert's own numbers?
25   A. I don't recall one.

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1   Q. Okay.
2   A. I mean, I don't know for sure but I don't
3   recall one.
4   Q. Would you say that a more typical VRA case
5   where plaintiffs are challenging in at-large districts
6   that the minority group makes up around forty percent
7   of the voting age population?
8   A. I don't think that's typical.
9   Q. Your CV indicates that you've testified in
10   five cases in which at-large districts were challenged
11   under Section 2 of the VRA. Benavidez v. Irving
12   Independent School District.
13   A. Hold on a second.
14   What -- did you say my vita?
15   Q. Your -- yeah, your CV.
16   A. Identified five at-large election cases?
17   Q. Uh-huh.
18   A. I'm not aware of that.
19   Q. Okay. Did you testify or provide a report in
20   Benavidez v. Irving Independent School District?
21   A. Yes.
22   Q. How about U.S. v. Euclid City District Board
23   of Education?
24   A. Yes.
25   Q. How about Fabela v. City of Farmers Branch,

23 (Pages 89 to 92)

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1 Texas?
2   A. Yes.
3   Q. Montes v. City of Yakima?
4   A. Yes.
5   Q. Rodriguez v. Grand Prairie Independent School
6 District?
7   A. I testified but did I write a report? I must
8 have.
9   Q. I think you did.
10   A. Okay.
11   Q. I'm not going to testify but I think you did.
12   Do you remember which of those cases have the
13 highest minority VAP according to the numbers accepted
14 by the courts?
15   A. No, I don't.
16   Q. Does it sound correct that Euclid City was
17 forty percent?
18   A. I really don't know.
19   Q. So you don't know -- if the other cases were
20 less than forty percent, you don't have any
21 recollection?
22   A. I don't remember what the VAP figures were for
23 those cases, no.
24   Q. Well, would you agree that a VRA case in which
25 the minority VAP and the white VAP are roughly

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1 identical is rather unusual?
2   A. Well, yes, I think unusual would be an
3 appropriate term.
4   Q. Okay. And do you recall in the five cases I
5 just mentioned, was there ever a minority candidate
6 that had been elected?
7   A. Prior to the case?
8   Q. Uh-huh.
9   A. That's another fact that I just don't recall.
10 I mean, I wouldn't be surprised if in some there were
11 and in others there weren't. But I don't remember.
12   Q. Have you -- well, let me ask. How many VRA
13 cases have you been involved in where there's
14 consistently been minority representation on an elected
15 body?
16   A. That I also don't know.
17   Q. Do you think it's often? More often than not?
18   A. That there has been --
19   Q. Consist --
20   A. -- minority rep consistently? I -- I don't
21 know if that would be consistently.
22   Q. You don't know if you've been involved in
23 cases where African American -- or minorities have
24 consistently been elected to the governing body?
25   A. It's possible that there were some that were

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1 consistently. But there may have been one when there
2 could have been more.
3   Q. Okay.
4   A. But I don't retain those kind of facts from
5 case to case.
6   Q. So you can't name a specific case in where
7 there was consistent minority representation?
8   A. Okay. Farmers Branch, I don't think there
9 was. Grand Prairie went no further than the depo. I
10 mean, I just don't.
11   Q. Okay.
12   A. These are descriptive facts that I don't
13 retain.
14   Q. That's fine.
15   A. Okay.
16   Q. I don't know or I don't remember is a fine
17 answer.
18   A. Okay.
19   Q. Are you aware that the Ferguson-Florissant
20 School District has consistently elected minority
21 representation going back to the 1980s?
22   A. Yes, I know there are old elections where
23 African Americans have been elected.
24   Q. Have you ever provided an opinion in all of
25 the VRA cases that you've been involved in that there

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1 was not racially polarized voting?
2   A. Well, the answer would be yes, in terms of not
3 legally significant racially polarized voting.
4   Q. And what case -- what cases would you have --
5 would you have provided that sort of opinion?
6   A. That was a case involving the Minneapolis City
7 Council in Minnesota.
8   Q. Do you know when that was?
9   A. No. Quite a while back.
10   Q. Is that the only case that you remember coming
11 to that conclusion?
12   A. I have looked at data and told lawyers what I
13 could say and then not been retained. They may have
14 been involved with no finding that racially polarized
15 voting wasn't present but I don't have the details of
16 those things.
17   Q. Okay. In a case for which you have been
18 retained, have you ever offered an opinion that was
19 contrary to your client's case?
20   A. Contrary to my client's case and I was
21 testifying?
22   Q. Retained.
23   A. I don't recall that.
24   Q. Have you ever been involved in a VRA case
25 where the plaintiffs propose a voting district of only

24 (Pages 93 to 96)

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1 fifty-two point eight six BVAP?
2   A. I don't know specifically about that. You're
3 talking about Prong 1 districts?
4   Q. I'm just asking have you been involved in a
5 case where the proposal was for a single-member
6 district to have fifty-two point eight percent BVAP?
7   MS. EBENSTEIN: Could you clarify? What you
8 do you mean by the proposal? I think that's what he's
9 asking.
10   MS. ORMSBY: Oh, sure.
11   Q. (By Ms. Ormsby) One of the illustrative
12 plans.
13   A. Okay.
14   Q. Provided by the -- obviously not you but
15 another Plaintiffs' expert.
16   A. Well, I've provided some too.
17   Q. Okay. Well, good. That helps.
18   Have you ever been involved where the proposal was
19 for a district with fifty-two point eight percent?
20   A. Okay. You are confusing me with proposal.
21   Q. Okay.
22   A. Because certainly there have been in terms of
23 Prong 1 illustrative districts.
24   Q. Uh-huh.
25   A. I don't remember the exact numbers but there

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1 have been some that were not far above fifty percent in
2 voting age population or maybe even CVAP.
3   Q. Okay. How about fifty-one point five percent
4 BVAP?
5   A. Well, like I said, it's pretty close. And
6 that's what I said, I've been in some in which the
7 illustrative district was just a little above fifty
8 percent.
9   Q. Do you remember how much over fifty percent
10 that was?
11   A. No, I don't.
12   Q. Okay. Would you consider fifty-one point five
13 percent a little bit over fifty percent?
14   A. Yes.
15   Q. Okay. Did you author an article entitled
16 Cumulative and Limited Voting: Minority
17 Electronical -- Electorial -- Electoral Opportunities
18 and More?
19   Let me say that again. I really messed that up.
20   A. And that's one of my easier titles.
21   Q. It's late. Let me try it again.
22   Cumulative and Limited Voting, colon, Minority
23 Electoral Opportunities and More, question mark,
24 unquote. Did you author that?
25   A. Yes, in the Saint Louis University Public Law

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1 Review.
2   Q. That's right. Do you remember when that was?
3   A. No, I don't remember the date of the article.
4   Q. I'm going to give it to you then.
5   A. Okay.
6   Q. I won't -- I won't expect you to remember by
7 memory what you said in that report.
8   (Defendant's Exhibit K was marked for
9   identification.)
10   Q. (By Ms. Ormsby) All right. Can you tell me
11 when it was published now by looking at it when it was
12 dated?
13   A. This says 2010.
14   Q. Could you look at page 101, as they're
15 numbered on these pages obviously.
16   A. I'm there.
17   Q. Okay. About halfway down the first paragraph
18 under Minority Electoral Opportunities, there's a
19 sentence that starts: There are numerous variations in
20 how at-large districts.
21   Are you there?
22   A. At-large elections.
23   Q. I'm sorry. I looked away too fast.
24   Could you read that sentence to the end of the
25 paragraph, please?

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1   A. From there to the end of the paragraph?
2   Q. Yes.
3   A. Okay.
4   There are numerous variations in how at-large
5 elections are implemented but -- comma, but regardless
6 of the particular arrangement, this system does have a
7 tendency to favor candidates preferred by a majority
8 group or at least the largest group of voters within
9 the jurisdiction.
10   Q. Go ahead.
11   A. More?
12   Q. Yeah, the last sentence.
13   It provides?
14   A. Oh.
15   It provides the largest group of voters an
16 opportunity to determine the winners of all of the
17 seats.
18   Q. Okay. So when you say that the system tends
19 to favor candidates preferred by the majority group,
20 how do you define the majority group?
21   A. The one that has the most -- well, majority
22 group at that point -- let's see. Let me find where
23 that is. I believe majority group in that context
24 refers to the nonminority group voters. I think
25 majority is referring to a -- not a quantitative thing

25 (Pages 97 to 100)

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1   but a status kind of thing.

2   Q. So you're not using majority group to mean the

3   group that has more than fifty percent of the voting

4   age population? And population, not voting age

5   population, but of the overall population?

6   A. Let me look at the -- well, it probably does

7   refer to a quantitative. It's a quantitative

8   determination.

9   Q. So over fifty percent? The population that is

10   over fifty percent?

11   A. Yes.

12   Q. Okay. And when you say that this system --

13   A. -- And may I say?

14   Q. Uh-huh.

15   A. Might be referring to not just population but

16   voting age population.

17   Q. And so what do you -- what do you -- when you

18   say the system tends to favor candidates preferred by

19   the largest group of voters as opposed to the majority

20   of voters, what do you mean?

21   A. That would -- I would think I'm referring

22   there to a plurality group.

23   Q. Okay. So this system when we're talking about

24   at-large elections tends to favor a group that makes

25   up, say, forty-nine percent of the electorate as

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1   opposed to a group that makes up forty-eight percent of

2   the electorate; is that right?

3   A. Well, I say here at least the largest group of

4   voters --

5   Q. And can you --

6   A. -- within the jurisdiction.

7   And then I say: It provides the largest group of

8   voters an opportunity to determine the winners of all

9   the seats.

10   So it's actually referring to voters.

11   Q. If you read further up in that paragraph, you

12   say that it -- you talk about communities and

13   jurisdictions with small populations, don't you?

14   A. In that paragraph?

15   Q. In the same paragraph.

16   A. Okay. Let's see. That's what I say, yeah.

17   Q. And nowhere in this paragraph do you refer to

18   voting age population, you specifically just say

19   populations; isn't that right?

20   A. Small populations, yes. I'm just referring to

21   the jurisdiction.

22   Q. So in that same paragraph when you refer to

23   the largest group, wouldn't you still be referring to

24   the population?

25   A. No. Because when I say the largest group, I

Page 103

1   say the largest group of voters.

2   Q. Okay. That doesn't change the fact that in

3   this case we've already established through another

4   expert's numbers that African Americans, blacks, have a

5   plurality or the largest group of voters; is that

6   correct?

7   A. I don't know if that's been determined.

8   Q. That that's what we looked at --

9   A. -- That's the figure you gave me.

10   Q. And if those figures are correct, if I'm not

11   misrepresenting those numbers, we've already

12   established that that -- it would be -- the single race

13   black BVAP is higher than the single race white VAP,

14   correct?

15   A. According to these numbers.

16   Q. Which would mean that the minority has a

17   plurality?

18   A. Of VAP.

19   Q. Of VAP. Correct?

20   A. Correct. Not necessarily of voters but of

21   VAP.

22   Q. And how do you determine the largest number of

23   the majority of actual voters?

24   A. Well, you do estimates. If you can't -- there

25   are few jurisdictions -- a few places where they

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1   actually give you the precise number. You don't have

2   to estimate it. Otherwise you have to estimate it.

3   And generally that now would be done through King's

4   methodology.

5   Q. Okay. So in this article you're stating that

6   the system tends to favor a group that makes up, say,

7   forty-nine percent of the electorate as opposed to a

8   group that makes up forty-eight percent of the

9   electorate?

10   A. By electorate are you referring to people who

11   actually vote?

12   Q. Uh-huh. Well, you tell me. Would that?

13   A. Well, in that context the electorate may

14   change from election to election.

15   Q. Okay.

16   A. In terms of voter turnout. And even in terms

17   of what's sometimes referred to as roll-on.

18   Q. R-O-L-L dash O-N?

19   A. That works, yes.

20   Q. Okay. And what does that -- what does that

21   mean?

22   A. That means you come, you receive the ballot,

23   and you actually voted in a -- you rolled-on to vote in

24   a particular election.

25   Q. Okay.

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1   A. Could be all of them. Could be one. So
2 sometimes, and especially in local government, roll-on
3 may differ in that, here we go, one group may roll-off
4 more than another.
5   Q. Okay.
6   A. Well, that's more common. But roll-off is
7 when you show up and, like in the election at issue,
8 you may not vote.
9   Q. Even though you show up and take a ballot?
10   A. Correct.
11   Q. And you turn in a ballot with no votes on it?
12 That would be roll-off?
13   A. Well, you could -- well, roll-off refers to
14 specific offices on the ballot.
15   Q. So --
16   A. It could cover all of them. If somebody got a
17 ballot and didn't vote for any candidate on the ballot,
18 then I guess you would say they rolled-off all of the
19 contests.
20   Q. But if I voted for just one contest and not
21 another, that would be considered roll-off as well?
22 I'm just trying to get the definition down.
23   A. No. Well, it would be -- if you voted for
24 the -- one of the contests you voted for you would --
25 that would be, you know, you voted in that election.

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1 The other one could be roll-off if you -- then if you
2 didn't vote in that election, you rolled-off that
3 contest, that part of the ballot.
4   Q. So a popular example in my area -- I want to
5 make sure. So a lot of people are -- judges are
6 reelected after they're appointed and you'll have
7 a long list of judges that you vote, you know, yes or
8 no on. Literally it's yes or no.
9   A. So they're approved after --
10   Q. -- Retained or --
11   A. -- Retained. Okay.
12   Q. Okay. And so a lot of people, because they
13 don't know anything about the judges, they just don't
14 vote on those at all but they vote on everything else
15 on the ballot. Would that be an example of roll-off?
16   A. Sure, on the judicial contests.
17   Q. Okay. All right. I got it.
18   A. And turnout can be -- it can be used for
19 election day turnout, getting a ballot. It can be used
20 for turnout on specific offices.
21   I'll try and keep my hand down. My wife complains
22 about that all the time.
23   Q. So when you say in this article that the
24 system provides the largest group of voters an
25 opportunity to determine the winners of all the seats,

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1 you mean that the forty-nine percent has an opportunity
2 to elect one hundred percent of the candidates if the
3 forty-nine percent is the largest -- is the plurality
4 of any specific group that votes that day; would that
5 be true?
6   A. In other words, you're saying forty-eight
7 point nine is not now VAP but actual turnout on the
8 election?
9   Q. Uh-huh.
10   A. Well, if there's opportunity to win
11 theoretically.
12   Q. Okay.
13   A. But racially polarized voting can affect that
14 as well.
15   Q. Going to refer you to what's been marked as
16 Exhibit A. And I just want you to look at the
17 illustrative plans that have been proposed by
18 Dr. Cooper. The first one is on page -- Figure 10,
19 page 23.
20   A. These are just statistical summaries.
21   Q. This is his Illustrative Plan No. 1.
22   A. Okay. But there's not a map on this page.
23 It's just the --
24   Q. Just the....
25   A. -- just the statistics. Okay.

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1   Q. And you can see that District 7 -- or no,
2 District -- yeah, District 7 has a fifty-two point
3 eight six BVAP; do you see that?
4   A. Yes, I do.
5   Q. Okay. Do you believe that a district with
6 fifty-two point eight five percent BVAP is an effective
7 single-member district?
8   A. I don't have an opinion one way or the other
9 'cause I haven't studied this particular district.
10   Q. So we deposed Mr. Cooper yesterday and he said
11 he would defer to you in these -- to answer that
12 question. So you're telling me you have no opinion; is
13 that right?
14   A. I'm telling you all I have here is one figure,
15 fifty-two point eight six percent. Nothing else.
16   Q. Uh-huh.
17   A. It does identify it as voting age population.
18   Q. It's --
19   A. I don't know anything about the past electoral
20 history in the geographical area of District 7.
21 Haven't looked at this. I don't know what kind of
22 differences there may be socioeconomically and other
23 things, but for the -- between the African Americans
24 and the non-African Americans in the district.
25   Viability can depend on size of the black

27 (Pages 105 to 108)

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1 population but it can also be affected by what kinds of
2 whites are in there, what their turnout tendencies are,
3 and what their candidate preferences tend to be.
4   Q. And is that something that you would have
5 expected Mr. Cooper to analyze?
6   A. I don't know what Mr. Cooper was addressing.
7 Did he write about effective districts?
8   Q. He -- I'm asking is that something that you
9 would -- you don't analyze that? You would expect some
10 other expert to analyze those things that you just
11 listed?
12   A. Well, all I know is I have not analyzed
13 districting plans. I haven't assessed proposed, not
14 proposed, illustrative districts for viability or
15 effectiveness or anything like that.
16   And so for me to sit here and look at one
17 percentage figure and say whether that's an effective
18 district is too much to ask of me. I don't have the
19 information I need.
20   Q. Would you have an opinion as to what sort of
21 turnout rate would be required to produce a result --
22 the results assumed by Mr. Cooper in those -- in that
23 illustrative plan?
24   A. Well, I don't know what result Mr. Cooper
25 assumed. So I can't.

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1   Q. Well --
2   A. Either let me know or I can't answer the
3 question.
4   Q. Isn't the goal of the illustrative plan in
5 this case to create four single-member districts that
6 could elect African-American candidates?
7   A. I notice that there are four majority African
8 American and VAP districts. The extent to which that
9 was a goal, to elect African Americans, maybe it -- I
10 don't know. I haven't talked to Mr. Cooper about what
11 the goals were. I believe it's a, as he says,
12 illustrative plan so I think he's satisfying Prong 1 in
13 Thornburg v. Gingles.
14   Q. If you could turn to paragraph 9 of that same
15 report where Mr. Cooper states what he was asked to
16 determine by the attorneys for Plaintiffs. It's on
17 page 3.
18   A. Oh, three.
19   Q. Page 3. Uh-huh.
20   Page 3, paragraph 9.
21   A. Okay. I'll read it now?
22   Q. Sure.
23   A. Okay. Well, what he says here is Plaintiffs
24 asked him -- Plaintiffs' attorneys asked him to
25 determine whether it's possible to create four majority

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1 black districts in a single-member district plan for
2 the school district.
3   Q. And my question, so there's -- you haven't
4 been asked to analyze and Mr. Cooper says he wasn't
5 asked to analyze whether or not those four districts
6 were effective or not; is that -- you haven't been
7 asked?
8   A. I haven't been asked to analyze that. I can't
9 speak for Mr. Cooper.
10   Q. Okay. Plaintiffs in VRA cases typically try
11 to assess things like turnout differential between
12 racial groups in specific neighborhoods in order to
13 assess whether specific districts are effective for
14 African Americans. And you did not conduct that sort
15 of analysis; is that correct?
16   A. I did not --
17   MS. EBENSTEIN: Sorry. Objection. You're
18 asking him about what plaintiffs normally do in all
19 cases?
20   MS. ORMSBY: In all cases. Generally
21 plaintiffs in the cases we've read have assessed things
22 like turnout differential.
23   MS. EBENSTEIN: Beyond the scope of his
24 knowledge of plaintiffs in cases that you've read.
25   Q. (By Ms. Ormsby) Did you conduct any sort of

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1 analysis with regard to turnout differential in
2 specific neighborhoods between racial groups?
3   A. No.
4   Q. Is it your belief that looking at BVAP is
5 sufficient to determine whether or not a group -- a
6 district is effective?
7   A. It -- well, I -- would you repeat it?
8   Q. Uh-huh.
9   Do you believe that it's sufficient to only look
10 at BVAP to determine whether or not a district is an
11 effective single-member district?
12   A. I think I just said that to determine whether
13 one was an effective district you'd want to look at
14 additional information. However, for Prong 1, that's
15 all you need.
16   Q. I'm going to -- was going to ask you the exact
17 same questions about his second illustrative plan,
18 which is on -- which is Figure 12 on page 26, where
19 Mr. Cooper has again four --
20   A. Twenty-six. I'm there.
21   Q. Uh-huh.
22   He's created four districts again with majority
23 BVAP. And this one, District 6, has fifty-one point
24 five percent. But I am assuming that your answers will
25 be exactly the same as what they were for the fifty-two

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1 point eight percent; is that right?

2   A. Correct.

3   Q. Okay. If it was determined that the

4 Ferguson-Florissant School District as a whole had an

5 AP BVAP of around fifty-one percent, if that were the

6 case?

7   A. AP?

8   Q. Uh-huh.

9 AP BVAP of fifty-one percent.

10   A. What does AP mean?

11   Q. Any part black --

12   A. Okay.

13   Q. -- voting age population.

14   A. Of what percent?

15   Q. Fifty-one percent.

16   A. Uh-huh.

17   Q. Would you conclude -- could you conclude

18 whether or not that would be an effective district?

19   A. And for what purpose is this district offered?

20   Q. As a district as a whole. If the district as

21 a whole is determined to have an AP BVAP of fifty-one

22 percent, would that be -- could that be an effective

23 district?

24   A. Well, it could be. It's an effective district

25 in terms of what it takes to satisfy Prong 1. Now, is

Page 114

1 it an effective district in terms that somebody can say

2 there was the probability of electing of that -- a

3 minority-preferred minority candidate, if that's their

4 preference, that would require some analysis.

5   Q. But you have not been requested to conduct any

6 of that analysis as it relates to Illustrative Plans 1

7 and 2, or to that scenario where the entire district

8 is?

9   A. That is correct.

10   Q. Okay. Did you analyze whether blacks and

11 whites turned out at the same or different rates in

12 April elections?

13   A. No.

14   Q. Did you analyze voter turnout for any election

15 not held in April?

16   A. No.

17   Q. So in this case the Plaintiffs want the court

18 to change the date of the election presuming -- from

19 April to some other date. They don't state what month.

20 But you didn't analyze anything to do with that; is

21 that right?

22   A. That's correct.

23   Q. And that's because you weren't asked to?

24   A. Yes.

25   Q. Okay. Have you been asked to in other cases

Page 115

1 to do that analysis?

2   A. We are talking about the analysis of -- well,

3 I usually refer to viable. Some people use the

4 expression -- the adjective effective. That's what

5 you're --

6   Q. -- No, no, no.

7   A. Okay.

8   Q. I want to know if you've ever been asked to do

9 a turnout -- voter turnout analysis regarding one

10 election date versus another in any case that you've

11 been an expert in.

12   A. I don't recall doing an analysis of that.

13   Q. Can you -- I'm going to change gears now.

14 Okay?

15   A. Okay.

16   Q. Just a little heads up.

17 Can you tell me what -- what is a majority vote

18 requirement?

19   A. A majority vote requirement is a requirement

20 that in order to be elected a candidate must receive a

21 majority of the votes cast in the decisive election.

22   Q. And does the Ferguson-Florissant system

23 require that?

24   A. Not to my knowledge.

25   Q. And do you believe that a majority vote

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1 requirement tends to help or harm African-American

2 candidates?

3   A. Depends whether they're the majority or not.

4   Q. Generally does it help or hurt?

5   A. I would say empirically it tends to hurt

6 because most jurisdictions are not majority African

7 American.

8   Q. All right. And what is bullet voting?

9   A. Bullet voting is a synonym for single-shot

10 voting. But more specifically can be used to express

11 the fact that voters vote for only one candidate.

12 That's also the literal definition of single-shot

13 voting but some people will expand that. They may try

14 to vote for two candidates --

15   Q. So --

16   A. -- that they prefer.

17   Q. So if there's two spots -- if there's two --

18 they're going to elect two candidates. If there

19 were -- you could vote for two people. You could vote

20 for two people and you only vote for one, that would be

21 bullet voting?

22   A. Yes.

23   Q. And if there were three candidates up for

24 election, bullet voting could be voting for one or two

25 candidates when you really can vote for three if you

29 (Pages 113 to 116)

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1   **wanted to; is that what you're saying?**
2   A. Well, bullet voting and single-shot voting are
3   synonymous.
4   **Q. Uh-huh.**
5   A. But there are times when certainly single-shot
6   voting people might talk about a situation where the
7   presence of the minority group at issue --
8   **Q. Uh-huh.**
9   A. -- is large enough and other statistics
10   indicate that they have the electoral strength to elect
11   two candidates. And so, therefore, there's the
12   question of coordinating or, you know, how they
13   allocate their votes across two, say two minority
14   candidates that they prefer.
15   **Q. If it were a three-candidate election or, you**
16   **know, you could elect three people and there were two**
17   **African Americans running and the rest were white, one,**
18   **two, three, four, you know, more than two -- let's say**
19   **there's two whites and two blacks -- or more whites. I**
20   **don't care. And if the African Americans all went and**
21   **voted for just the two African-American candidates,**
22   **that's permitted under the Ferguson-Florissant system;**
23   **is that right?**
24   A. To my knowledge, it is.
25   **Q. Does bullet -- does the research indicate that**

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1   **bullet voting tends to help or harm African-American**
2   **candidates?**
3   A. That can be quite context specific. I mean,
4   by bullet voting you can -- if you -- just like in a
5   single-member district, if there were more than one
6   minority candidate that they preferred and, you know,
7   if they split their vote with the one-vote rule, I
8   mean, if they divide between those two candidates, they
9   may result in those two candidates losing. That can
10   happen. The system doesn't preclude that.
11   And the same thing with single-shot voting. I
12   mean, there could be context probably where there might
13   be too much dispersion of the vote across their own
14   candidates and even though they were the majority they
15   could lose.
16   **Q. But we agree that if in an election, as we've**
17   **seen in a couple of the elections here, there were more**
18   **African-American votes cast than white votes cast.**
19   A. I don't know that.
20   **Q. Let's say that's the case.**
21   A. Okay. Well, let me -- also can I add to my
22   last answer?
23   **Q. Sure. Uh-huh.**
24   A. Whether single-shot voting or whatever variant
25   of it is effective, isn't just a matter of how the

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1   minority group votes, it's also a matter of how the
2   rest of the electorate votes. If the rest of the
3   electorate can, if they're the majority, can certainly
4   preclude the election of minority candidates by casting
5   their votes only for the number of candidates there are
6   seats to award.
7   **Q. Say that last part again for me, please. I'm**
8   **sorry.**
9   A. Okay. Yes. Single-shot voting doesn't work
10   unless the other group -- we'll call it the white
11   group -- disperses their votes over more candidates
12   than there are seats to be elected.
13   **Q. Okay.**
14   A. You know, that can prevent the election of a
15   minority candidate. So it's not just how the minority
16   behaves, it also depends on how the rest of the
17   electorate behaves.
18   **Q. But in my previous example where there's three**
19   **seats up for election, two African Americans and the**
20   **rest of the candidates are white, and African Americans**
21   **cast more votes than the whites, if those -- if the**
22   **African Americans would go in and vote -- give their**
23   **votes only to the two African-American candidates,**
24   **those candidates are going to get elected, right?**
25   A. I think the way you expressed it it's a

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1   mathematical certainty.
2   **Q. Thank you.**
3   **You've already acknowledged that Courtney Graves**
4   **encouraged bullet voting in her election; is that**
5   **right?**
6   A. I believe what I said is that Professor Rodden
7   claims that she did.
8   **Q. Okay.**
9   A. And even provided -- or at least a link to
10   some -- I believe their Facebook pages, in which it's
11   clear in those that she was asking voters to cast just
12   one vote and that for her.
13   **Q. Did you look at those Facebook pages?**
14   A. I looked at the links that he provided, yes.
15   **Q. And is that what she was doing, is asking --**
16   A. -- Well, yes. I'm sorry. Go ahead. Are you
17   done?
18   **Q. Was she asking voters to just vote for her, to**
19   **bullet vote for those?**
20   A. In those Facebook postings, yes.
21   **Q. Okay.**
22   A. I have no idea how more extensively that
23   happened.
24   **Q. Okay. In the 2015 election could -- or no.**
25   **In the 2014 election where Mr. Savala lost by**

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1   ninety-one votes, could he have asked people to bullet
2   vote for him? There's nothing in the rules that said
3   he couldn't; is that right?
4   A. Well, if there's nothing in the rules that
5   said he couldn't, then there's nothing to say he
6   couldn't.
7   Q. Okay.
8   A. He would be permitted to do that.
9   Q. Okay.
10   (Defendant's Exhibit L was marked for
11   identification.)
12   Q. (By Ms. Ormsby) All right. I've handed you
13   Exhibit J. It's an article --
14   A. Exhibit what?
15   Q. I'm sorry. Exhibit L.
16   A. I have that.
17   Q. Okay. And it's an article entitled "The
18   Underrepresentation of Blacks in City Councils,"
19   correct?
20   A. Correct.
21   Q. And you authored this article?
22   A. Coauthored it, yes.
23   Q. And it was published in The Journal of
24   Politics in 1982; is that correct?
25   A. I'd have to check on -- yes, 1982, and it is

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1   The Journal of Politics.
2   Q. Okay. One of your findings in this paper is
3   that at-large districts are bad for minority
4   representation; is that correct? I know it's been a
5   while so do you remember coming to that conclusion?
6   A. Well, I certainly -- that at-large -- I think
7   in this paper we would have concluded that at-large
8   elections tend to dilute minority votes.
9   Q. Okay. Do you recall how you measured the
10   black population percentage in each city in this
11   paper?
12   A. Black percent of population.
13   Q. Overall population, correct?
14   A. Yes, it would be.
15   Q. And you got those figures from the census; is
16   that right?
17   A. I believe that would be the case at this point
18   in time.
19   Q. Does this paper conclude that at-large
20   districts are bad when the minority population is under
21   fifty percent?
22   A. The variable here is black percent of
23   population so the conclusions would be based if they
24   start -- if the conclusions refer to specific relative
25   presence figures, they would be for a total population.

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1   Q. And in this study what happened to cities that
2   had populations -- minority population over fifty
3   percent; do you remember?
4   I think it's on page 1093. At the bottom of the
5   paragraph before the footnote.
6   A. Before the footnote. What I'm looking for
7   here is a statement of what the criteria for being in
8   the sample would be. I'm not aware that there are
9   cities above fifty percent in this study.
10   Q. You eliminated them, didn't you? You
11   eliminated the cities with over fifty percent
12   population?
13   A. I don't know if we eliminated them or they
14   weren't in the sample.
15   Q. Could you on page 1093 read the last sentence
16   which goes over into the next page. Starts with: Due
17   to data on black median income.
18   A. Okay.
19   Q. Says: Due to data on black median income not
20   being reported for fifteen cities, all of which have
21   less than one percent black population, and our
22   decision to eliminate the four central cities in which
23   blacks constitute a majority of the population,
24   parentheses, the theoretical specification assumes
25   minority status, end quote.

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1   The following analysis is based on central cities
2   in two twenty-four SMSAs.
3   Is that what it says?
4   A. You read that correctly.
5   Q. Thank you.
6   So you eliminated those cities over fifty percent?
7   A. Those four, yes. For theoretical reasons.
8   Q. What does it mean theoretical specification
9   assumes minority status? What does that mean?
10   A. Well, that at-large elections tend to dilute
11   the votes of minorities.
12   Q. But that parentheses is right under -- right
13   after the phrase that you: Our decision to eliminate
14   the four central cities in which blacks constitute a
15   majority of the population, parentheses, the
16   theoretical specification assumes minority status, end
17   quote.
18   What does that mean all together?
19   A. That means that -- the theory behind this is
20   the impact of at-large elections on minority groups
21   that are also quantitative minorities.
22   Q. So if the population is over fifty percent
23   African American, then that would not fit your criteria
24   for the study?
25   A. That would be the case.

31 (Pages 121 to 124)

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1   Q. Okay. So this paper really doesn't tell us
2 anything about districts with minority populations that
3 exceed fifty percent; would you agree with that?
4   A. Let's see. Does it -- is this -- okay. And
5 your question was?
6   Q. That this study doesn't tell us any -- this
7 paper doesn't tell us anything about districts or
8 communities with a minority population that exceeds
9 fifty percent.
10   A. Well, this doesn't say anything about
11 districts exceeding fifty percent or not.
12   Q. All right. Thanks.
13   A. I mean, these are -- the data here concerned
14 cities, not districts.
15   Q. Okay. Any -- this paper doesn't have anything
16 to do with any city, municipality, school district, any
17 governing body and their constituents with a minority
18 population over fifty percent; would you agree with
19 that?
20   A. That's correct.
21   Q. Okay. Do you dispute -- and I'm changing
22 gears.
23   Do you dispute the fact that for thirteen of the
24 years since 2000, the Ferguson-Florissant School Board
25 had one or two African-American members?

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1   A. I'd have to review the data again.
2   Q. And your central claim seems to be that due to
3 white block voting, African Americans cannot elect
4 preferred candidate -- preferred candidates absent
5 special circumstances; am I saying that correctly?
6   A. Could you say it once more?
7   Q. Uh-huh.
8   Due to white block voting, African Americans
9 cannot elect preferred candidates absent special
10 circumstances; is that correct?
11   A. That would be the history of the elections I
12 analyzed.
13   Q. So that's your opinion?
14   A. Say it again. I'm sorry.
15   Q. Sure.
16   A. I must be getting tired.
17   Q. I want you to get it right.
18   A. Go ahead.
19   Q. It's your opinion that due to white block
20 voting, African Americans cannot elect preferred
21 candidates absent special circumstances. I would say
22 due to white block voting they don't have an
23 opportunity equal to that of other members of the
24 electorate?
25   Q. Okay. So is your claim that all of the black

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1 victories over the last fifteen years, can it be
2 explained -- what can you -- well, how do you explain
3 that? How do you explain the African-American
4 candidates elected to the school board in the last
5 fifteen years? Were there special circumstances
6 involved or?
7   A. I don't know what was involved. I'm not
8 interested in what are often referred to as stale
9 elections. So we're in 2015. I'm not interested in
10 elections that go back fifteen years and I don't
11 analyze them. They're not in my report.
12   Q. But it is your belief that all of the African
13 Americans elected in the last five years were elected
14 due to special circumstances?
15   A. No, I didn't say that for the 2014 election.
16   Q. But you did say for the 2014 election, didn't
17 you, that two of the preferred candidates did not get
18 elected, correct?
19   A. Yes.
20   Q. So in 2013 if Mr. Henson had received an
21 additional one hundred and twenty-six votes, he would
22 be serving on the board today; do you agree with that?
23   A. 2013. Okay.
24   Q. Uh-huh.
25   A. If the only change in the behavior of the

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1 voters is to give Mr. Henson a hundred and twenty-six
2 more votes?
3   Q. Uh-huh.
4   A. Then -- and I believe what you have
5 represented is that would mean more total votes than
6 Brown?
7   Q. Correct.
8   A. Okay. Yes.
9   Q. And in 2014 if Mr. Savala had received an
10 additional ninety-one votes under the same scenario, he
11 would be on the board today; isn't that right?
12   A. Another ninety-one?
13   Q. Uh-huh.
14   A. That's the only change that occurred. If
15 somebody just stuck ninety-one more votes into the
16 ballot box for him, given what you are representing,
17 then he would be on the board.
18   Q. So if a total of two hundred and seventeen
19 votes had gone differently in those two elections,
20 that's one twenty-six plus ninety-one, the board would
21 currently have four African Americans serving?
22   MS. EBENSTEIN: I'm sorry. Could you explain
23 that to him differently?
24   MS. ORMSBY: According to my previous two
25 questions where if it had gone -- if they had received

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1   those votes like we just discussed, then they would be
2   on the board. He already said that.
3   Q. (By Ms. Ormsby) So I'm just verifying there
4   would be four members on the board if they had been
5   elected?
6   A. And one of these votes was Henson and the
7   other was?
8   Q. Savala.
9   A. Savala. Okay. Yes, if the voters had voted
10   differently, there would be four. The outcome would
11   have been different.
12   Q. And you don't dispute that the census
13   calculations, which I know you haven't done but other
14   Plaintiffs' experts have, indicate that African
15   Americans do not -- do not constitute a majority of the
16   VAP? You don't know? I know your answer to that
17   already but I'll let you answer.
18   A. Well, I did read Dr. Rodden's report.
19   Q. Uh-huh.
20   A. And I believe, as I recall, the data he
21   provided showed that as of the last time data were
22   available there was a larger white VAP than black, I
23   believe. I think it was only an extrapolation line out
24   later that was the basis for his conclusion, I believe,
25   that it's now a majority African-American VAP.

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1   Q. I'm going to represent to you that it's --
2   it's just numbers from the Election Authority. It was
3   two hundred and seventeen votes total that they --
4   okay.
5   But what I'm confused by and what I'm trying to
6   figure out how to put this articulately is, isn't your
7   theory that whites somehow thwarted or blocked the
8   African-American candidates from being elected also
9   just a guess? Isn't it just -- how do you prove that
10   that's what caused it and it wasn't something else?
11   A. It's really quite straightforward mathematics.
12   All right? In 2011 they would have won -- the two
13   black candidates would have won if only the black votes
14   were counted.
15   If you go to the white vote though, they lose.
16   And they lose enough to cancel the support in the black
17   voters. That's what is called submission. I mean --
18   Q. But if --
19   A. -- at-large elections, not submission. What
20   am I -- submergence. They get submerged in a larger
21   white vote and as a result they lose. That happened in
22   2011. That happened in 2012. That happened in 2013.
23   Q. But couldn't it --
24   A. And did not happen in 2014 and 2015 is a
25   serious question given its postlitigation status and

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1   Q. I think that there's a plurality. I don't
2   want to put testimony in -- I don't want to -- I'm
3   going to just leave it. Okay?
4   A. Okay.
5   Q. I don't want you to speculate and I don't want
6   to put testimony into the record so we'll just leave
7   it.
8   Do you have a technique for demonstrating that
9   those two hundred and seventeen votes went the way they
10   did because of white block voting rather than simple
11   bad luck or ineffectual campaigning?
12   A. What happened to those two hundred and
13   seventeen votes? I'm not aware they ever existed.
14   It's a hypothetical. You've changed the fact basis,
15   alleged fact basis. I mean, you're giving me a
16   hypothetical if this happened in 2013, then if this
17   happened in 2014, it would have been different. I
18   can't tell you what happened to two hundred and
19   seventeen votes that never existed. What happened was
20   they didn't exist and Mr. Henson and Mr. Savala lost.
21   Q. Do we agree though that those two candidates
22   lost by a total of two hundred and seventeen votes?
23   A. I did not do that calculation. So I'm taking
24   your word for it in my answers. I think I made that
25   clear.

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1   the differences.
2   Q. But we --
3   A. So I don't think that's hypothetical.
4   Q. But we agreed that -- or according to your
5   numbers only forty-five percent -- forty-five point six
6   percent of African Americans voted for the two
7   African-American candidates?
8   A. No, you're wrong.
9   Q. I'm wrong?
10   A. Only -- we're talking in 2011, was that it?
11   Q. Yes.
12   A. Okay. Which one are you counting?
13   Q. Graham and Hawkins, the two African-American
14   candidates. The percent of African-American votes that
15   the two of them together got was forty-five point six.
16   A. Yes. The percent of African-American voters
17   who voted for them would be higher probably. So you
18   referred to it as African-American voters. You have to
19   be clear.
20   Q. African-American votes. Okay.
21   A. Votes cast by African Americans.
22   Q. I will -- I will concede that point.
23   A. All right. And some of these people may also
24   have voted, they may have used a third vote.
25   Q. Can I finish my question?

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1   A. Yes, you may now.
2   **Q. Thank you.**
3   **Fifty-four point four percent, is that right? I**
4   **checked my math. But over fifty percent of African**
5   **Americans cast a vote for a white candidate; do you**
6   **agree with that? They cast their vote for either**
7   **Martinez or Morris or Chabot or Ebert or Clark or Lentz**
8   **or Hosea. They cast their vote for one of those. They**
9   **gave a vote to a white candidate; do you agree with**
10   **that?**
11   A. Actually, I -- oh, we don't know how many of
12   those that voted gave a vote. What we know based on
13   the estimates is only thirteen point five percent of
14   them voted for either Graham or Hawkins.
15   **Q. I'm talking about African-American voters now.**
16   **I'm not talking about --**
17   A. I thought you said white.
18   **Q. No. I'm saying that fifty -- fifty -- what is**
19   **it? Fifty-four point four percent of African-American**
20   **votes did not go to either Graham or Hawkins and rather**
21   **went to one of the white candidates; is that correct?**
22   MS. EBENSTEIN: I'm sorry. Which page are you
23   on?
24   MS. ORMSBY: I'm on page 17.
25   MS. EBENSTEIN: And fifty-four -- just so I

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1   can follow it, fifty-four point four percent?
2   MS. ORMSBY: One hundred minus forty-five
3   point six is --
4   A. I think you had it right.
5   MS. GABEL: Okay.
6   MS. ORMSBY: So twenty-four point one plus
7   twenty-one point five is forty-five point six.
8   MS. EBENSTEIN: Okay.
9   MS. ORMSBY: Right? Of American votes --
10   African-American votes went to either Graham or
11   Hawkins.
12   MS. EBENSTEIN: Uh-huh.
13   MS. ORMSBY: That leaves fifty-four point four
14   votes -- percent of the votes went to a white
15   candidate.
16   MS. EBENSTEIN: Okay.
17   MS. ORMSBY: Right? That's what I'm talking
18   about.
19   MS. EBENSTEIN: Okay.
20   MS. ORMSBY: So are we good? On the same
21   page?
22   MS. EBENSTEIN: Yeah. Got it.
23   **Q. (By Ms. Ormsby) Okay. So if just some of**
24   **those African-American votes would have gone to Graham**
25   **or Hawkins, they would have won; isn't that right?**

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1   A. Well, I don't know about just some. But
2   certainly there's a number of votes that could be added
3   to their total and they would then win a seat.
4   **Q. So it's not necessarily --**
5   A. I'm not done. All right?
6   But we're going through the same thing over and
7   over. And I'm saying these -- what you're presenting
8   are hypotheticals. If it would have been different,
9   the outcome could have been different.
10   I'm dealing with reality. I'm dealing not the way
11   voters could have voted, but the way voters did vote
12   when they went into the polls and voted in these
13   city -- in these school board elections.
14   **Q. But the VRA only requires that African**
15   **Americans, or whatever the minority is, have the**
16   **opportunity -- are not denied the opportunity to elect**
17   **their chosen candidate; do you agree with that?**
18   A. Right. But one of the context in which you
19   assess that is Prong 3.
20   **Q. But there are other -- but there's nothing in**
21   **any of these elections that would prevent the African**
22   **American from being elected. They could have gotten**
23   **elected. They could have gotten elected even if the**
24   **whites voted exactly the way they did, just if they**
25   **changed their vote -- if African Americans changed**

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1   **their voting pattern; do you agree with that?**
2   A. Well, and whites would could change theirs.
3   That's not the way it happened. Your expert's numbers
4   show the same thing as mine.
5   So what you're asking is, again, if it had been
6   different, it could have been different. That doesn't,
7   I don't believe, get us very far in understanding
8   whether voting is racially polarized.
9   **Q. So you just said, quote, because she wrote it**
10   **down, "African Americans get lost in the larger white**
11   **vote." That's what you said.**
12   A. Submerged I believe I said.
13   **Q. How do you know if there was a larger white**
14   **vote if you didn't analyze turnout?**
15   MS. EBENSTEIN: Didn't he say that for the
16   definition of submerge?
17   MS. ORMSBY: No, that's just what he said
18   while he was pontificating.
19   MS. EBENSTEIN: About what?
20   MS. ORMSBY: My question about whether or not
21   African Americans could have won by just simply more of
22   them voting. It wasn't about -- this is just what he
23   said within the last two minutes, a quote. Not from
24   before.
25   MS. EBENSTEIN: Okay.

34 (Pages 133 to 136)

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1   Q. (By Ms. Ormsby) So if you didn't analyze
2   voter turnout, which you already testified that you did
3   not, how do you know that there was a larger white
4   vote?
5   A. Well, what these numbers are based on are the
6   estimates of those who cast votes.
7   Q. Right.
8   A. Not who showed up at the polls. Those who
9   cast votes. It's a two-stage procedure where you do
10   look at estimates of participation and they then go
11   into your estimates of candidate preferences. As I
12   said, the issue is voters.
13   Q. And it doesn't bother you in any way that
14   because of two hundred and seventeen votes that this
15   lawsuit has been filed? If two hundred and seventeen
16   votes would have gone differently, we wouldn't be
17   sitting here today.
18   MS. EBENSTEIN: Actually you shouldn't. That
19   misrepresents the nature of the lawsuit. And your
20   question is does that bother him?
21   MS. ORMSBY: Yes.
22   MS. EBENSTEIN: Okay.
23   Q. (By Ms. Ormsby) Does it bother you?
24   A. Does it bother me? The elections, some of
25   them turned out fairly close. There's a common

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1   expression in politics, We ain't playing horseshoes.
2   Close doesn't count.
3   Q. And that doesn't -- if it's close, it
4   doesn't -- it doesn't give you pause at all?
5   A. Well, tell me, did Graham or Hawkins serve
6   three years on the school board after this election?
7   Q. No.
8   A. Okay. Did Morris serve three years on the
9   school board after this election?
10   Q. Which election are you talking about?
11   A. 2012. Sorry.
12   Q. B. Morris. There's two Morrises. That's why
13   I asked you.
14   A. Okay.
15   Q. I didn't know which Morris you were talking
16   about.
17   A. Is that true?
18   Q. Yeah. But I'm not going to answer your
19   questions. I get to ask you questions.
20   A. Well, I'll say the same thing for 2013. What
21   happened? Those candidates did not serve on the school
22   board. And you want to tell me that I should be
23   disturbed because if they only got two hundred and
24   seventeen more votes two of them wouldn't? I'm not
25   disturbed. I look at what happened.

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1   Q. Okay.
2   A. There's no question they were not elected.
3   And there's no question, I don't care whose numbers you
4   look at, that's because they didn't get sufficient
5   white votes to be elected. They were vetoed under
6   Prong 3.
7   Q. But they could have got black votes and gotten
8   elected. They could have got a few more blacks votes
9   and they would have gotten elected.
10   A. Like I've said all along, it doesn't matter
11   what the source was. It would have been different if
12   they got those additional votes.
13   Q. From whatever source?
14   A. From whatever source.
15   Q. Okay.
16   A. But it didn't happen.
17   Q. All right.
18   A. And it's not like the only election we have is
19   2011.
20   Q. Okay.
21   A. Okay.
22   Q. Have you been asked to form any opinion on any
23   subject that is not included already in your two
24   submitted reports?
25   A. No.

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1   Q. And do you plan or have you been asked as of
2   today to do any additional work between now and trial?
3   A. Prepare for trial but not if you -- by that
4   you mean additional analysis?
5   Q. Uh-huh.
6   A. I have not been asked to do that.
7   Q. Okay.
8   A. You know, whether I am is a question of these
9   people but they have not asked.
10   Q. I'm not asking you to look into the future,
11   I'm asking as of today.
12   A. All right.
13   MS. ORMSBY: I don't have any other
14   questions.
15   MS. EBENSTEIN: Okay.
16   Can we take five minutes.
17   (Short break.)
18   CROSS-EXAMINATION
19   BY MS. EBENSTEIN:
20   Q. Dr. Engstrom, we met. My name is Julie
21   Ebenstein. I'm representing the Plaintiffs. We
22   retained you in this case. I just have a few questions
23   to ask you.
24   A. Okay.
25   Q. About the questions that have already been

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1   asked by defense counsel.
2   First, have you ever reviewed Bill Cooper's report
3   before today?
4   A. No. I haven't reviewed it today either.
5   Q. My next question was did you have the
6   opportunity to review the full report or did you note
7   the pages that defense counsel asked you about?
8   A. I believe I looked at pages that I was
9   requested to look at.
10   Q. Have you had a chance to -- did you read or
11 receive Dr. Kimball's report before today?
12   A. No.
13   Q. Okay. In the 2011 election on page 17 of your
14 report, how many African-American candidates are there?
15   A. Two.
16   Q. And how many votes was each voter allowed to
17 cast in this election?
18   A. Three.
19   Q. And could a voter who voted for both of the
20 African-American candidates have cast their third
21 ballot for one of the African-American candidates?
22   A. Yes -- no, excuse me. For -- already voted
23 for those two.
24   Q. Yes.
25   A. No, they could not add any votes to that.

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1   Q. To rephrase my question, could a voter have
2   voted twice for an African-American candidate?
3   A. No.
4   Q. So if a voter wanted --
5   A. -- For a particular African American?
6   Q. Correct.
7   A. No.
8   Q. In this particular election could a voter have
9   voted twice for one of the two African-American
10 candidates?
11   A. No.
12   Q. Okay. Does that mean that if a voter wanted
13 to cast a third ballot it would necessarily be for a
14 non-African-American candidate?
15   A. If an African-American voter wanted to cast a
16 third ballot?
17   Q. Yes.
18   A. And they had already voted for Graham and
19 Hawkins?
20   Q. Yes.
21   A. Yeah. The only remaining choices are white.
22   Q. Or just to phrase it differently. If an
23 African-American voter cast all three votes that
24 they're entitled to cast, would they by definition have
25 to cast at least one for a white candidate?

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1   A. Yes.
2   Q. You were asked a moment ago whether
3   single-shot voting is permitted under the current
4   system. It is permitted, correct?
5   A. Correct.
6   Q. Is single-shot voting required?
7   A. No.
8   Q. Have you ever come across a system where
9   voters are required to give up their right to cast any
10 number of votes in an election?
11   A. No.
12   Q. Would you -- would you -- would you say that
13 African-American voters have equal opportunity to elect
14 candidates if -- of their choice if the only way for
15 them to elect candidates of their choice is to cast
16 fewer votes than white voters?
17   A. I would -- I don't think I would call that
18 equal, no.
19   Q. Okay. You were asked about a deposition that
20 you gave, Exhibit J, in a Northern District of Ohio
21 case, the Euclid City School Board case, correct?
22   A. Correct.
23   Q. There we go.
24   And could you turn back to page 26 where defense
25 counsel asked you to read from the deposition record.

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1   A. I'm there.
2   Q. Defense counsel asked to you read your answer:
3   My conclusion is based on the fact that the voting age
4   population based on the ACS surveys is substantially
5   higher than, I would say, than the threshold of
6   exclusion.
7   Is that correct?
8   A. That's what it reads.
9   Q. Could you read that next paragraph so that we
10 have your complete answer on the record.
11   A. The remainder of the answer is: I understand
12 that African American -- I think that's supposed to be
13 plural -- are politically cohesive judging from the
14 findings in the City case and the stipulations in that
15 case -- in this case. Sorry. With that as well, that
16 is the primary basis for it. The numbers of the
17 potential electorate are there. There's a cushion for
18 if we are using the 2007 ACS number.
19   Q. Do you recall that the parties in this -- you
20 mentioned earlier that you were only testifying about
21 remedies in this case; is that correct?
22   A. In the Euclid, yes. Yes, that is correct.
23 Euclid City School District case I was -- well, I have
24 to -- I know -- I believe they stipulated that voting
25 was racially polarized. I know they did that. So

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1 whether the entire hearing was remedial or I'm -- I
2 would have to reread the opinion.
3   Q. Okay.
4   A. I mean. But there wasn't any RPB testimony.
5 The school district said yes, voting is racially
6 polarized here and then they went on.
7   Q. And the part -- the answer that you just read
8 starting with: Well, my conclusion is based.
9   Based on that question were you talking about the
10 voting -- the threshold of exclusion that you had
11 calculated, one sixty point eight and one twenty point
12 seven?
13   A. Well, I know the -- this answer of mine refers
14 specifically to the threshold of exclusion.
15   Q. Okay. Not to a determination that you made
16 about the demographics of the voting age population?
17   A. It was a comparison of the voting age
18 population and the threshold of exclusion, the
19 percentages of what -- both those figures.
20   Q. Okay. If you could turn to the next page,
21 twenty-seven, in that deposition transcript. Towards
22 the end the question starts: Based on sample data.
23 Does that report a confidence interval for the
24 estimates used?
25   MS. ORMSBY: Julie, may I just verify that you

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1 are one, two, three, four, five.
2   MS. EBENSTEIN: Yeah.
3   MS. ORMSBY: Up from the bottom?
4   MS. EBENSTEIN: Five paragraphs from the
5 bottom on page 27.
6   MS. ORMSBY: Thanks.
7   A. Okay. You're beginning with a question:
8 Based on sample data for those three years. It says
9 your report -- should I read it?
10   Q. (By Ms. Ebenstein) Sure.
11   A. Okay.
12   Based on sample data for 2005, 2006, and 2007.
13 You report that the ACS estimate for Euclid is forty
14 point two percent with a confidence interval for the
15 estimated range from thirty-eight point six to
16 forty-one point nine; is that correct?
17   And I say: That's correct.
18   Q. Okay. On the next page, page 28, one, two,
19 three, four, five, the sixth paragraph. Does that say:
20 Isn't it true that the data provided by ACS for the
21 City of Euclid does not provide reliable racial
22 composition estimates that Dr. Handley could have used
23 in drawing a remedial redistricting plan?
24   And didn't you say: She would have to do
25 something with their figures to estimate what it would

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1 be at a lower level?
2   And that you --
3   What would that be?
4   I don't know.
5   I'll just read it out.
6   She would have to something with her figures.
7   And the answer is: The figures themselves, I
8 think, are not going to provide you a reliable thing.
9 You don't -- they don't take you down to that level.
10 You can take it down to that level. There's a lot of
11 uncertainty at that point.
12   A. That's what -- that's what the questions were
13 and my answers.
14   Q. Okay. And do I understand that in this case
15 the data -- that the data was calculated elsewhere and
16 stipulated to in this case; was that correct? Did the
17 parties stipulate to certain parts of the data?
18   A. To certain -- I know the school board
19 stipulated to the existence of racially polarized
20 voting. Now, if you're referring to other data, I
21 don't recall.
22   Q. Okay. And on page 29. This is the last piece
23 I'd like to look at. One, two, three, four paragraphs
24 down. You say: I think I just said I don't know how
25 he derived his estimates. All I know is he took the

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1 ACS numbers, did something with them to provide
2 estimates. The U.S. Government used those estimates in
3 this case.
4   Is it correct that you did not make a calculation
5 based on ACS estimates but calculated a threshold of
6 exclusion based on data given to you?
7   A. I don't recall. Is there an answer in the
8 deposition?
9   Q. There's not a direct answer but those points
10 taken together, I think, are a more complete reading of
11 the portion that defense counsel had you look at
12 earlier.
13   A. Can you tell me what I should read?
14   Q. Sure.
15   A. I know you did but.
16   Q. No, that's okay. Back to twenty-six, the full
17 answer.
18   A. Page 26?
19   Q. Yeah.
20   A. I'm there.
21   Q. That your -- what you read earlier: My
22 conclusion is based on the fact that the voting age
23 population based on the ACS, it is substantially
24 higher, I would say, than the threshold of exclusion.
25   And you go on to say: I understand that African

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1 **American -- African Americans are politically cohesive**

2 **judging from the findings in the City case and the**

3 **stipulations in this case. With that as well, that's**

4 **the primary basis for it.**

5   **Is it correct that the stipulations were the**

6 **primary basis on which you are judging the threshold of**

7 **exclusion?**

8   A. Repeat the question, please.

9   **Q. Did your data come from ACS or were you**

10 **looking at a stipulation? And as you put it: The**

11 **numbers of the potential electorate are there.**

12   A. Well, this refers to stipulations and to ACS.

13 Not --

14   **Q. Okay.**

15   A. -- really clear as to which. If there was any

16 difference even.

17   MS. EBENSTEIN: Okay. Those are all the

18 questions I have. Thank you.

19   MS. ORMSBY: I don't have any further

20 questions.

21

22

23

24

25

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1   I, RICHARD ENGSTROM, do hereby state that I have

2 read the foregoing questions and answers in this

3 transcript of my deposition, page 5 through and

4 including page 149, and that this is a true and

5 accurate report of said answers given in response to

6 the questions propounded and appearing herein.

7

8   _____

9   RICHARD ENGSTROM

10

11

12   Subscribed and sworn to before me this _____

13 day of _____, 2015.

14   _____

15   NOTARY PUBLIC

16

17   My commission expires _____.

18

19

20

21

22

23

24

25

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1   MCGRAW REPORTING, L.L.C.
                  Certified Court Reporter
2   2927 Droste Road
                  St. Charles, MO 63301
3   314.704.2727

4

5

6 August 24, 2015

7

   American Civil Liberties Union
8 Ms. Julie A. Ebenstein
   125 Broad Street, 18th Floor
9 New York, New York 10004-2400

10

11 In re: Deposition of Richard Engstrom
              NAACP, et al vs. Ferguson-Florissant

12

13 Dear Ms. Ebenstein,

14   Enclosed please find your copy of the transcript,
   the original signature page, and the errata sheets for

15 the deposition of Dr. Engstrom. Please have him read
   the transcript, make any necessary corrections on the

16 errata sheets, and sign the original signature page and
   the errata sheets in front of a notary public.

17

        Please send the signed and notarized signature

18 page and errata pages directly to Ms. Ormsby, as she
   will have the original transcript.

19

        If you have any questions, please don't hesitate

20 to call me.

21

                  Sincerely,

22

23

24   Sandy McGraw

25

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1   E R R A T A   S H E E T

2   I do hereby certify that I have read the foregoing
   deposition and that, to the best of my knowledge, said

3 deposition is true and accurate (with the exception of
   the following corrections listed below):

4

5 PAGE/LINE   CORRECTION AND REASON FOR CORRECTION

6

7

8

9

10

11

12

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____

21 _____

22 _____

23 _____

24

        _____

25   RICHARD ENGSTROM

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1   E R R A T A S H E E T
2   I do hereby certify that I have read the foregoing
     deposition and that, to the best of my knowledge, said
3   deposition is true and accurate (with the exception of
     the following corrections listed below):
4
5   PAGE/LINE   CORRECTION AND REASON FOR CORRECTION
6
7
8
9
10
11
12
13   _____
14   _____
15   _____
16   _____
17   _____
18   _____
19   _____
20   _____
21   _____
22   _____
23   _____
24
          _____
25   RICHARD ENGSTROM

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1   STATE OF MISSOURI   )
) ss
2   COUNTY OF ST. CHARLES   )
3
4   I, Sandra McGraw, Certified Court Reporter within
5   and for the State of Missouri, do hereby certify that
6   pursuant to agreement between counsel came before me in
7   the law offices of Crotzer & Ormsby, 130 South Bemiston
8   Avenue, Suite 602, in the County of St. Louis, State of
9   Missouri, RICHARD ENGSTROM, who was by me first duly
10   sworn to testify the whole truth of his knowledge
11   touching the matter in controversy aforesaid; that he
12   was examined and his examination was reduced to
13   shorthand writing by me on the day, between the hours,
14   and at the place, and in that behalf aforesaid; and
15   afterwards transcribed into typewriting, and presented
16   to the deponent for signature and his said deposition
17   is now herewith returned.
18
19   IN WITNESS WHEREOF, I have hereunto subscribed my
20   name on this _____ day of _____, 2015.
21
22
23   _____
24   Sandra McGraw, CCR #614
25

39 (Pages 153 to 154)

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